

THE NATIONAL WAR REFERENDUM

By
Philip B. Lowry *Benjamin*

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Introduction

The conscience of contemporary America faces a serious challenge. So frequently has it been said that free government in our country, with its democratic features, is moving toward an even more doubtful and confusing future that the import of the statement loses its proper gravity and significance. The political, economic, and moral institutions of the nation are in hesitant and rapid transition.¹ To a decade like our own, caught in the grip of another World War, whose issues, however incalculable, will undoubtedly be profound, there is just reason to pause and examine these inevitable transformations which manifest themselves in a multitude of facts and in a great complexity of circumstances.

The development of twentieth century science has accentuated the normal disparity between material progress and social thought.² Throughout the world maladjusted political and social systems are struggling for survival in the midst of recurrent economic crises, political opportunisms, moral degradation, and, at the moment, with the unpleasant promise of a war which may once again engulf the world.

There is, likewise, a growing spirit of apprehension over the possibility that America may again be involved in settling the disputes of power politics.³ Our own system is of

1. Charles A. Beard presents this general theme in his recent book, America in Mid-Passage.
 2. This is the sociological concept of the cultural lag.
 3. Frank Simonds and Newton D. Baker several years ago said United States entrance into another general European war was inevitable if such a conflict occurred. Quoted from Associated Press Dispatches.

immediate concern to us, but the almost vital relationships of this nation to others gives the problem a perplexity that at times appears nearly insurmountable. Yet, some effort is obligatory if America is to face the uncertain future with confidence.

Modern democracy everywhere shows itself in a distrustful and reactionary mood, and appears to be aimlessly groping toward some unknown end. Democracy no longer sounds a militant and aggressive keynote. The principles of free government are on the defensive; what is needed is a new faith in the ultimate worth of the institution of democracy in America and a whole-hearted feeling of the people that our way of life can adequately meet the national crises just ahead.

And while the basic assumption is made that democracy is still the best and most practical and satisfactory method of solving our present exigencies, and making the world a better place in which to live,⁴ it should not be concluded that this constitutes a blind allegiance to our present form of government. Rather, it means that if democracy is to remain forceful and dominant, it must be revitalized and adapted to the tempo of the times. This implies that there is much to be done in the way of improving democratic government as we know it today.

4. J. St. Loe Strachey, The Referendum, 1924, Chapter 1.

In keeping with this effort, numerous proposals and counter-proposals have been offered to implement and buttress the receding security of an alarmed America. Perhaps foremost among these is the national war referendum which has been given tangible and popular expression in the Ludlow Resolution, commonly known as the peace amendment. The purpose of this work is to undertake a consideration of that problem. The topic, moreover, is of such proportions that it must include a discussion of related subjects.

This analysis is patterned to first picture the historical background of popular participation in government in America; second, to outline the history of the war referendum in America; third, to discuss the referendum as an instrument of popular government; fourth, to scrutinize the negative arguments of the national war referendum; fifth, to seek the positive arguments of a national war amendment; sixth, to show the modifications imposed upon any conclusion because of the workings of allied concepts, namely the realisms of politics and the vicissitudes of public opinion; and lastly, to summarize a conclusion upon the basis of the foregoing facts and analyses. A chapter has been devoted to each of these phases of the issue which is the subject of an interesting and much debated controversy.

Recognized authorities in the field of government are in

conflict as to the merit and propriety of the war referendum. In any event, keen observers of political tendencies seem to be in agreement that of late years there has been a reaction from the favorable opinion once entertained of delegate legis-
⁵lation and action. It is equally true that growing economic collectivism has not been accompanied by a corresponding growth in political collectivism or popular control. Instead, we have seen the substitution of governmental agencies to consolidate what was once normally the sphere of action for
⁶representative government.

The fundamental conflict is plain, but its solution is difficult and remains to be found. The particular phase of free government which is discussed here is not looked upon as a panacea for the basic problem but is intended to reflect
⁷the larger concepts of which it is an integral part.

5. Atlantic Monthly, the Decline of Legislatures, LXXX, p. 51.
 6. Harold J. Laski, Democracy in Crisis, Chap. 11, 1933.
 7. This idea was expressed by Norman C. Thomas in a letter to the Nation Magazine on January 6, 1938.

CHAPTER ONE

The History of Popular Government in America

History reveals that the instrument of government, known as the referendum, is not an original device of the modern period. A chronological analysis of the complete evolution of popular and legislative sovereignty will show that the earliest forms of government, however crude and immature, were more or less popular in nature. This primitive system was in turn succeeded by a monarchical form and was followed by a representative structure of government which was historically supplanted by one almost completely direct and popular. Thus, this would indicate that the course of governmental forms represents a cycle; and, so it is that we find ourselves concerned with a phase of that same cyclical evolution. To understand the topic in hand, it is vital and essential to call attention, at least briefly, to the historical course of popular participation in government and more particularly to the historical record of the referendum itself.

A number of recent writers have said "that modern political thought which may be called broadly democratic, takes its rise in the sixteenth century and is the child of the Re-
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formation." The coordinate principles of economic and political freedom which were fundamental accompaniments of the Lutheran Revolt, which was centered on religious democracy, were of undoubted influence in channelling and moulding the

8. Charles Borgeaud, Rise of Modern Democracy in Old and New England, 1894, pages 2-3.

democratic movement, but the survival of popular forms throughout Europe, especially in English local governments, would tend to show that this occurrence was a regeneration rather than a birth of democratic ideas. Noteworthy is the knowledge that the guild system of the Middle Ages fostered and preserved democratic ideas. Nor can the influence of the customs, traditions, and practices of the craft guilds which derived their primary ideas from the folkmoot, be ignored.⁹

In any case, dating from this period marked by rapid revolutionary ecclesiastical development, there is a quickening of the popular movement which is especially noticeable in the church covenants of the time.¹⁰ Embodied in this church instrument was an expression of an agreement based on equality, whose force was derived from voluntary consent of the members and was binding upon the individual only after his personal approval; in addition, the church covenant was not a vaguely defined creed--it was a written contract (or compact) which applied to those who acceded to its tenets. With the spread of the Reformation, the idea of the church covenant is disseminated with it; and the process, by which it was transformed into a political device, was vital to the acceleration of the democratic tide which had long been held in abeyance through absolutistic and coercive concepts.

This democratic development of the church is particularly significant because the belief is held that in the church covenant, there existed the motivating force which inspired

9. James Tingey, Some Notes Upon the Craft Guild, V.15, 1902.
 10. Burrage, The Church Covenant Idea, 1904, Chap. 1-5.

the popular constitution as it evolved in America. This trans-
 plantation of certain democratic substances and forms was ac-
 complished through early colonial development which was seeking
 security and refuge from religious persecution in England in
 order that it might give voice and tangibility to these demo-
 cratic sentiments of religions which were also political in
 nature and thought.
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Having noted the source, the survival, the regeneration,
 and the expansion of the principle of popular government, we
 must scan its projection to America. It was characteristic
 for the New England colonies to be settled as cooperative
 units rather than as individual enterprises. Not infrequently,
 the New England colony was simply a reflection of the Puritan
 church organization which had been brought from the Old World
 to the New, and its objectives were principally spiritual
 although such organizations, subsequently and incidentally,
 broadened their scope to include secular undertakings. The
 Mayflower Compact was predicated to meet the unprovided needs
 of civil government which were not included in the religious
 covenant, and this instrument stands as a landmark in American
 constitutional development. Bancroft says, "This was the
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 birth of constitutional liberty." However, this appears as

11. The thought should not include the idea that there was any
 unusual measure of individual freedom within the ranks of the
 religious sects dominant at the time since the church dogma
 called for strict adherence to its creeds when that doctrine
 was once accepted.

12. Bancroft, History of the United States, 1898, Vol. 1, p.244.

somewhat of an overstatement in light of the fact that the Mayflower Agreement was not the first of such popular creations. The fact should be realized that this compact was not without precedent, since the document merely realized the doctrine of "common assent"¹³ in Puritan circles many years before and prominent in guild organization many decades prior to this time.

Quite naturally, therefore, this instance should be regarded as the continuation of a natural process, based on preceding historical practices. The important fact is the realization that this manifestation of popular direction and initiative led to the formation of others which followed the same substantive pattern.

As a natural outgrowth of the colonizing movement, the New England colonial governments followed the same general procedure as the church congregations--that of subscribing to law under the church doctrine of common assent. This popular system did not flourish indefinitely, however, because the same factors which had undermined popular legislation in the Old World were becoming active in the New World. Too, this change saw the institution of the representative system although popular ratification was still followed. Because the delegate plan of organization met with dissatisfaction, there

13. This terminology was extant in most Protestant church literature and activity of the period, and has since then been carried over into political nomenclature.

occurred a counter movement to return, in some measure, to the earlier practice.

In the colonies, there was no uniform system followed, but the basic principles were the same throughout and always relied ultimately upon the popular will. For instance, the Plymouth colony which was peculiarly religious in its enterprise, used the church government idea as the means of assuring a democratic and popular government; whereas, the Massachusetts Bay colony, which had preceded New Plymouth, was organized on the plan of the guilds of the Middle Ages; and, although this may have produced a governing body less democratic, the eventual purposes and results of the two colonies were virtually similar, chiefly because they sought their affirmation from the same source--the people who were unhesitatingly regarded as the seat of sovereignty. By the time the representative form had begun to replace the active popular method of legislation in the colonies, there came into prominent use certain devices whereby the people could still directly express their will without the attendant functions of meeting collectively to adopt legislative acts and

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policies. Historical records can be easily interpreted to see

14. J. St. Loe Strachey, The Referendum, 1924. Strachey points out that Switzerland was not the originator of the referendum idea by any means. The ensuing reprint from the records of the Mass. Bay colony illustrates the American beginnings of the device: "It is ordered that, the governor, deputy governor, treasurer and Mr. Stoughton or any three of them with two or more of the deputies of Boston Charles Towne; or Roxberry shall peruse all those models concerning a forme of government and lawes to be established & shall drawe them up into one body & shall take order that the same shalbee copied out and sent to the severall townes, that the elders of the churches and freemen may consider of them against the next Generall Court & the charged thereof to be defrayed by the Treasurer." An entry in the journal of the Generall Court confirms the record and notes the approval of the proposed code as it was accepted by the people upon its being referred to them.

that these functions were early examples of the initiative and the referendum.

The importance of these early codes of popular government appears when it is realized, and emphasized, that here was the precedent, preparation, and background for popular constitutional formation. Many years later the constitutional fathers followed the same course as the colonies had previously employed in organizing their various governments. The inculcation of the idea of popular confirmation had become so well fixed when the New England Confederation was framed (1643) that the colonies registered their acceptance upon popular ratification, and the Plymouth representatives withheld such assent until they were certain of the sentiment and backing of the populace.

Having seen the origin of popular government in America which underwent many changes and modifications in accordance with local conditions and circumstances, we turn to a later period which is characterized by the framing of state constitutions. The impetus for the framing of the original state constitutions was derived from the Continental Congress during the first years of the American Revolution at which time (May, 1775) the Provincial Congress of Massachusetts sent a note to the Continental Congress which sought advice on an appropriate procedure for the creation of such a state constitution.

Shortly, thereafter, New Hampshire, Virginia and South Carolina sent similar requests. In reply to Massachusetts, the Continental Congress recommended the selection of a central governing body and a group of representatives. To the others, the Continental Congress recommended the establishment of such form of government as in their judgment will best promote the happiness of the people and most effectually secure peace and good order in their colony during the continuance¹⁵ of the dispute with Great Britain.

During the year 1776, the first of these constitutions appeared and became effective in the States of New Hampshire, South Carolina, Virginia, New Jersey, Delaware, Pennsylvania, North Carolina, and Maryland, even though they had not been submitted to popular ratification. Only in one state, Delaware, was there an elected convention for the specific purpose¹⁶ of evolving a constitution. In these instances, expediency dictated a method which was simple and speedy since conditions were unsettled and there was small opportunity to devise a procedure for a Constitutional Convention and to submit the formulated plan to qualified electors. Beside, the Revolutionary leaders, fearing the influence of the aristocratic Loyalist Party, were hesitant to refer such CONSTITUTIONS to the people themselves?

15. Thorpe, Const. Government of American People, 1902, Vol. 1, p. 110.

16. Ibid, Page 121.

17. Adams, Vannest, The Record of America, 1935, pages, 103-104.

These new constitutions were generally regarded as having the force of legislative enactment and being temporary in character, and it should not be thought that popular ratification was ignored for the facts support the contention that the application of colonial methods of popular law making awaited only for a favorable opportunity. Above all else, it should be noted that these tendencies to return to the colonial lesson in government, like popular legislation itself, were principally confined to or originated in those regions where the Puritan Church had been dominant, more particularly in New England.

New Hampshire led the way in constitution making, but a study of Virginia's constitutional course affords a better example of the essential point in question--representative as versus direct and popular government. In Virginia, the opinion prevailed that a constitution consisted of no more than an act of the legislature. The constitution finally agreed upon approached modern completeness, but the body which framed this instrument was not intended for this sole purpose nor were its members elected by popular vote. Such an action was radically different from that of Massachusetts which took unusual care to express the popular will. The latter procedure was

harmonious with the democratic ideas of Jefferson who denied the right of the Virginia body, sitting, he thought, as a quasi-legislature, to adopt a plan of government which was not authorized and approved by the people. Jefferson contended that this constitution was of no greater validity than an ordinary legislative act and could be repealed upon the move of the legislature. Jefferson further proposed that no fundamental act of the legislature should be adopted, modified or revoked without the consent of the people who were to be summoned into session in their respective counties. For all of Jefferson's efforts in bringing the plan of popular ratification, both of the original constitution and subsequent amendments, before the convention, his sentiments were little discussed if at all. This action of the Virginia Convention is not surprising since the delegates who framed the Virginia State Constitution were largely of aristocratic English stock. Those opposing views as between Jefferson and the Virginia Convention were subjected to judicial consideration several years later (1793) to an action which came before the jurisdiction of the General Court of Virginia.

The legislative body, the General Assembly, had approved a bill which endowed the District Courts of Virginia with the authority of a Court of Chancery in regard to the issuing of injunctions. The act was presumably in conflict with the Constitution; the issue was clearly defined.

Was the Constitution an ordinary statutory creation or was it a fundamental law; the first interpretation would mean that the act would stand and have the effect of repealing the constitutional provision; if the latter opinion were construed, the statute would be illegal since the Constitution would take precedence over a statute. In the decision handed down,¹⁸ the Court unanimously asserted the validity and permanence of the Constitution of 1776, and thereby repudiated the views of Jefferson. The relation of the decision to the basic premises of political theory is so direct as to warrant an extract from the case.¹⁹ Quoting Justice Nelson of the Virginia bench, "it is confessedly the assent of people which gives validity to a Constitution. May not the people then by their subsequent acquiescence and assent, give a Constitution under which they have acted for seventeen years, as much validity, at least so long as they acquiesce in it, as if it had been previously expressly authorized?"

The people have received this as a Constitution. The magistrates and officers, down to a Constable (even the mode of his appointment is directed) have been appointed under it.

"The people have felt its operation and acquiesced. Who then can change it? I answer the people alone."

18. Kamper v. Hawkins, 1, Virginia Cases 20.

19. Ibid, p. 28.

Here was what appeared to be an endorsement of democratic practice as exemplified by New England, but the fact is that this was the validation of a constitution which the people at large had never proposed or ratified.

The Virginia interpretation of what is meant by "assent of the people" comes to light in the same case in the opinion of Judge Tucker who describes Constitutional Conventions in this manner: "bodies neither authorized by, or drawn to, the then constitutional government; bodies, on the contrary, which the Constitutional officers of the then existing government considered as illegal, and treated as such. Nevertheless, they met, deliberated and resolved for the common good. They were the people assembled by their deputies; not a legal, or Constitutional assembly or part of the government as then organized. Hence they were not, or could be deemed the ordinary legislature; that body being composed of the governor, Council of burgesses, who sat in several district Chambers and Characters; while the other was composed of a single body, have neither the Character of governor, Council or legitimate representative among them; they were in effect the people themselves, assembled by their delegates to whom the care of the commonwealth was especially, as well as unboundedly confided."

That is a concise outline of the representation theory of constitution making and legislation.

20. Ibid, p. 69.

These words anticipated a notable future development and were much used (the same argument prevails even now) to curb the tendency toward direct participation by the people in the affairs of government.

But to the North, in what was formerly the New England Colonies there was an entirely different attitude; here was no attempt to rationalize a constitution on the basis of logical reasoning alone, but rather a sincere attempt to ascertain the will of the people; nor could it be expected that those colonies to the South which had not been reared out of a democratic background would follow a principal of popular political self-reliance and acknowledge the fundamental part of popular ratification. Such was the cross section of the political stratum as we turn to popular ratification in the national government which is especially in point because of its bearing on the question of a national referendum on war and which conforms, in substance, to any similar referendum on a national measure.

The Articles of Confederation had been based in most of the states upon legislative approval only. Madison said, speaking on the subject of popular ratification, "that he thought it indispensable that the new constitution should be ratified in the most unexceptionable form, and by the supreme authority of the people themselves."²¹

21. Madison, "Journal of the Federal Constitution," Vol. 2, page 795-6.

The proposal to submit the draft constitution to state legislatures was defeated in the Constitutional Convention of 1787, although the people were not directly asked to sanction the new constitution. But a number of the prominent delegates to the convention were adamant in adhering to the view that popular approval was the sole and correct method of adoption. Their reasoning was that the legislatures could not adopt the instrument because they are only creatures of the state constitutions and can not exceed the authority conceived within that body of law; consequently, the people can be the only source of adoption since they retain all rights, powers, and privileges, which they had not delegated to the constitution which was derived from them. Similar arguments were expressed many times afterwards when Congress was considering the extension of the concept of popular ratification in the submission of constitutional amendments directly to the people.

With the adoption of the constitution by the states, Congress was primarily left with the decision as to what extent there should be direct participation in the acts of government. The whole federal system had been devised as a system of checks and balances to obviate the disintegrating effects of crude, hasty legislation which would endanger property rights and individual liberties.

22. House Documents, 6th Cong., 2nd Session, Vol.3, No.529, p 526
 23. Congressional Globe, 36th Cong., 2nd Session, pt. 1, p.404-5.
 24. The separation of powers was first embodied in the Constitution of Virginia, probably because prior to this time the judges of the high court had held seats in the legislature; Montesquieu (1689) had earlier written upon what he thought to be the separation of powers in the English gov't. and upon returning to France eulogized the doctrine as a cardinal principle of good government.

The autocratic influences had insisted upon a plan of government which would make property rights forever secure and permanent, and so it was to be expected that Congress did not at first look favorably toward public interrogation and consultation. The first tangible evidence of such an antagonistic Congressional attitude toward direct participation was revealed in the first Enabling Acts passed for the purpose of admitting new states. Kentucky, Vermont, and Tennessee had formed and adopted their constitution prior to Congressional action and Congress merely passed acts of admission. It was not until the Ohio Territory sought admission that Congress began to use its power to prescribe the form of adopting State Constitutions and although the Congress of that period was not expected to ask for popular ratification of the state constitutions (since popular ratification had at that time been infrequently used by less than one-fourth of the states) the national body went beyond this and specified "that the convention provided for by the act was authorized to form a constitution and state government, or to call another convention which would form for the people of the said state, a constitution and a state government";²⁵ and there was no suggestion or implication that the instrument framed by the convention should ask the consent of the people in the formation of the instrument or seek popular ratification when the convention had finished its appointed assignment.

25. United States Statutes at Large, Vol. 1, pages 189-91, 491.

The single function of the electorate was to select delegates to the convention according to the method specified by Congress.

As could be expected, the New England membership in Congress brought strong opposition to the measure. Representative Griswold of Connecticut expressed the popular view when he said (and it serves well as a good explanation of the justification of modern popular government) "I am disposed to let them act for themselves; but, I am against imposing anything upon them contrary to their will. They are more deeply interested than we are in the establishment of a proper form of government. They, and not we, are to be bound by it. They, then, ought in its establishment, to act for themselves and not we for them."²⁶

As the years passed, the democratic voice for direct popular participation was subdued only by extraordinary effort and in the face of it, Congress still used the Ohio Enabling Act as a model. It was not until the Wisconsin Enabling Act of 1848, that "the people" were "authorized to form a constitution and state government."²⁷ The first clear indication of required popular ratification upon the direction of Congress took place upon the approval of the Enabling Act for Missouri. This act of Congress ordered the state constitutional convention to "take all necessary steps for the establishment of said gov- in conformity with the Federal Constitution, subject to the ap-²⁸ proval and ratification of the people of the proposed state."

26. Annals of Congress, 7th Congress, 1st Session, Col. 1113.

27. U. S. Statute at Large, V. 9, p. 56.

28. Ibid, V. 11, p. 166, Sec. 3.

Since 1856, all enabling acts have called for the mandatory submission of the state constitutions to the people at large. By this time, the practice of popular ratification within states where a federal jurisdiction was in point had become thoroughly established. The Reconstruction period following the Civil War saw an attempt by several of the southern states to make new constitutions effective without popular ratification which caused Congress to deny their validity and withhold re-admittance to the Union until the procedure of popular ratification had been followed. With the adoption of the 15th Amendment to the Constitution, the doctrine of popular ratification attained an apparently unquestioned status.

Especially important to note, is the move of Congress in referring measures of a special nature to the people because such action furnishes a precedent for the national war referendum considered herein.

In 1843, Congress directed the legislatures of several states to make provision for the sale of federal land grants, which were a subsidy to support schools, but carefully included in the act was that: "said lands, or any part thereof, shall in no wise be sold without the consent of the inhabitants of such township or district, to be obtained in such manner as the legislature of said states shall by law direct."²⁹

29. U. S. Statutes at Large, V. 5, page 600.

Shortly afterwards Congress provided for certain territorial re-distribution in Virginia and stipulated, "That this act shall not be in force until after the assent of the people of the county and town of Alexandria, Virginia, shall be given it."³⁰

The controversy over slavery, the mention of which^{is} anachronistic here from a chronological standpoint, produced some notable recognition of the referendum principle primarily upon the agitation of those who were pro-slavery in opinion. The Kansas-~~Nebraska~~^{Nebraska} bill (De. 1853) declared "That all questions pertaining to slavery in the territories, and in the new states to be formed therefrom, are to be left to the decision of the people residing therein, through their appropriate³¹ representatives." This was the language used by the Committee in reporting the bill to Congress and expressed Senator Douglas' doctrine of "squatter sovereignty." The bill as subsequently³² passed by Congress in a modified form read, "the true intent and meaning of this act is not to legislate slavery into any territory or state, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way subject only to the Constitution."

Just before the firing began at Fort Sumter, Senator³³ Crittenden of Kentucky proposed a compromise resolution: "That provision ought to be made by law without delay for

30. Ibid, V. 9, p. 35.

31. Ibid, V. 10, p. 289, Sec. 32.

32. Ibid, V. 10, p. 289, Sec. 32.

33. Congressional Globe, 36th Congress, 2nd Session, Vol.1, p.237.

taking the sense of the people and submitting to their vote
³⁴
 the following resolution, "as the basis for a final and per-
 manent settlement of those disputes that now disturb the peace
 of the country and threaten the existence of the union." While
 this measure was pending, Senator Bigler of Pennsylvania of-
³⁵
 fered a supplementary proposal which defined the method to be
 observed in taking a poll of the people on the issue and pre-
 scribed that such a vote should employ the same technique and
 be conducted by the same officers as governed the last presi-
 dential election. Extensive and heated debate followed on
 these measures, in the course of which Bigler in enunciating
 and clarifying his proposal, displayed a remarkable under-
³⁶
 standing of the referendum principle when he said: "It is not
 an attempt to interfere with the right of the people but simply
 to consult the power which made the Constitution and consti-
 tutes this body and the other House--the people, the source
 of all political power. The proposition is to take their
 will in advance of any action here."

Upon coming to a vote, the resolutions were defeated by
³⁷
 a majority of one when the crisis of the Civil War was close
 upon the nation. It is pertinent to remark that here was pos-
 sibly the solution for obviating the disaster which befell the
 United States in the form of the Civil War.

34. The resolutions were proposed amendments to the constitution and sought a compromise plan for deliverance from the issue of slavery.

35. Ibid, 405.

36. Ibid, 352.

37. Congressional Globe, 36th Congress, 2nd Session, pt. 1, 405.

The conditions which followed the Civil War are in all likelihood responsible for a reaction which countered the preceding one which had given wide recognition to the doctrine of popular participation in government. The 15th Amendment which gave suffrage to the negro probably had much to do with the trend and led to the changing of state constitutions to provide voting tests designed to exclude the negro vote. Mississippi inaugurated this move of retrogression and was followed in its action by South Carolina, Delaware, Louisiana, and Virginia. Even so, the movement was not long in regaining momentum, particularly in the states of the Middle West and the Pacific slope where the evolutionary process was assisted by organizations which were spontaneous in development and not unlike those which were in vogue among the New England colonies.

The first concrete manifestation of the adoption in America of the referendum as applicable to all legislation, was pioneered in through a joint resolution of the legislature of South Dakota in 1897.³⁸ The act came before the electorate of South Dakota, in the following November, and was overwhelmingly adopted. Three years later Utah followed the lead of South Dakota and Oregon was not far behind, although the demand and response for such popular action came slower as the result of con-

38. South Dakota Laws, 3th Sen'n. Chap. 49. Quoted from J. Bourne, Prerrepresentative versus Direct Gov't., pamphlet from a speech in Congress. The referendum act was applicable to municipalities and made the governor's veto power void on such measures. The same legislative resolution included an initiative provision which was contemporaneously adopted.

stitutional requirements. In rapid order, Nevada, Missouri, Montana, Delaware, Maine and Alabama were included in the extension of the referendum principle.

Most of what has been written thus far on the referendum has concerned the origins, the reactions toward, the regenerations, and the struggle of the general movement for popular participation and direct action by the people in government. Note was made of Federal action in this sphere as being conspicuously significant because of its bearing upon the Federal referendum principle. It now remains to trace the history of the war referendum which has merited the most consideration and discussion as a possible extension of the referendum into the jurisdiction of the national government. We have seen that the idea of consulting the people on various topics closely affecting them is not without precedent, and the principle of the constitution referendum merited the approval of some leading figures who once sat in Congress many years prior to the recent agitation for a war amendment such as the Ludlow Resolution.

39. Oregon Blue Book, Oregon Constitution. Art. 17, Sec. 1, p. 259. The original section which provided for this method was replaced by initiative petition Feb. 3, 1906, and adopted by vote of the people 47,661 for and 18,651, against June 4, 1906, and provides for concurrent majority approval by both branches and direct submission to the people at the next regular election. Edition of 1937-38.

CHAPTER TWO

History of the War Referendum

Since the Treaty of Westphalia was signed in (1618) ending the Thirty Years War, and especially since the Treaty of Versailles of 1917, there have appeared innumerable plans dedicated, according to their authors, to the noble end of making wars unnecessary, illegal, or impossible.⁴⁰ It is not unnatural for the volume of such pacifistically inclined literature to multiply toward the conclusion of great conflicts and the pre and post war periods have been no exception here in America.

An anachronistic allusion will serve to show that here is no new subject in content although the procedure for realizing peace in the war referendum is of a fresher character and different in nature.⁴¹ In 1795, Kant, stimulated by the French Revolution, proposed that all states should become republics and abolish standing armies. Kant further anticipated the League of Nations and Kellogg-Briand Pact by suggesting the renunciation of war as an instrument of national policy, but cautiously added that "two or three nations had better enter into an agreement to that effect and see how it worked out in practice."

Again approaching the relatively recent historical period, the fact of the voluminosity of peace literature is well illustrated by the scores of schemes motivated by the World War.

40. Carl Meyers, War by Referendum, American Mercury, V. 23, p. 321.

41. Kant, Perpetual Peace, 1895, Part III, IV, V.

Certainly the volume of such propoganda has surely not decreased in intensity as of this very moment. As a result we have the vestigial shadows of the World Court, the Locarno Pact, and the Pact of Paris.

America has had a large, if not active, part in the devising of such peace organizations; yet, America's singular contribution has been the suggestion and serious consideration of a national war referendum, the objective of which was and is to preclude war through the popular vote of the people who are presumed by these ardent peace patriots to be undeviatingly against all wars, thereby preventing United States from ever again engaging in foreign war. The issue has now become of paramount interest in the United States and has progressed beyond the stage where it can be considered as just another Utopian panacea for war.

With the intent of curbing Congressional war power, peace-minded Congressmen have introduced in Congress various resolutions, the most outstanding of which are those providing for a referendum by the people before Congress may declare war. In the period preceding America's entrance into the World War, a number of war referendum amendments to the Constitution were submitted, the leading sponsors of which were the elder Charles A. Lindbergh and Robert La Follette.

42. New Republic, Editorial, March 3, 1917, V. 10, p. 128, which quoted from the Congressional Record.

On January 31, 1916, Representative Denver S. Church of California, introduced House Joint Resolution 128,⁴³ which provided for a change of Article 1, Section V, Clause 11, which section defines the Power of Congress to declare war whenever it sees fit. The Resolution sought to restrict this power and declared⁴⁴ that Congress shall have power to declare war in cases of invasion or threatened invasion of the United States or any of its insular possessions by a foreign power; or in case of insurrection or revolution in either the United States or any of its insular possessions; or in any other cases where the matter of declaring war has been submitted to the people and a majority of those voting have declared themselves in favor of the proposed war." Congress, then by the phraseology of the Resolution, was to have the war power only in time of emergency, all other instances were to be left to the people. Representative Church summarizing his suggested amendment said: "It (the amendment) is the solution of the entire war problem,"⁴⁴ and quoting the remarks of President Wilson continued, "Rulers, not public opinion, brought on the present war in Europe."⁴⁵

A more elaborate and detailed measure for the enactment of the national war referendum was made public on May 5, 1916, and was titled as a "Bill for providing for an advisory vote on the Declaration of War."⁴⁶

43. Congressional Record, V. 53, Feb. 15, 1916.

44. Ibid.

45. Ibid.

46. Senate Journal, V. 53, Pt. 8, pp. 7451-6, May 5, 1916.

The text of the bill as introduced was poorly and ambiguous and is quoted verbatim.

The text of the bill read that whenever the President shall sever diplomatic relations with any foreign government, one percent of the qualified electors at the last Presidential election in each of twenty-five states shall file with the Director of the Bureau of the Census duly verified petitions, circulated by local election officials, and containing the votes of the people on this proposition: "Shall the United States declare war against the government of _____(here insert name of country in question) with which government the President has severed diplomatic relation. Yes _____ No _____."

Lengthy debate followed as to which Senate Committee should undertake a study of the bill although there was frequent allusion to the contents and implications of the bill. The terms of the bill took no power from Congress in respect to declaring war and merely provided for the taking of a popular advisory vote to sound the sentiments of the public at large by polling a cross section of the populace.

About a year later, Representative Buchanan of Illinois, made the statement that the executive officials who have no power to declare war are usurping the power of Congress to declare war if they take steps to lead the United States into war without consulting Congress. He said, "I am also strongly
47
in favor of a referendum on the question of war."

47. Ibid. V. 54, Pt. 41., p. 3431, February 16, 1917.

Included in the extension of remarks in the Congressional Record of the same day was a reprinted editorial from the New York American of February 14, 1917, which was headed, "The people of the United States alone have the right to decide war."

Senator Robert La Follette of Wisconsin, crystallized his ideas on a national war referendum in the form of Senate Joint Resolution 5796.⁴⁸ The American Union Against Militarism, the Women's Peace Parley, and Neutral Conference Committee promptly subscribed to the measure and began active agitation for its enactment in amendment form which they hoped would be immediately presented to the state legislatures.⁴⁹

This was shortly followed by an announcement of Representative Warren Bailey of Pennsylvania, in behalf of the war referendum. To prove the disparity between the opinion of a war-minded Congress and the views of the public in general, he submitted the results of a postal card referendum which had been conducted by sending ballots in post-card form to a cross-section of his constituency of the 19th District of Pennsylvania.

⁵⁰
The ballot showed:

Against entering the war and in favor of referendum	478
Against entering the war and no opinion on referendum	318
In favor of entering the war	<u>80</u>
Total	866

48. Ibid, Senate Journal, January 6, 1916.
49. Survey Magazine, "History of the Referendum, Feb. 10, 1917, V. 3, p. 550.
50. Ibid, V. 54, Pt. 6, p. 515.

Likewise, during this period numerous petitions supporting America's peace position were sent to Congress and President Wilson, outstanding among which were those endorsed by Labor.

51

House Joint Resolution, 371, ordering a referendum on the question of war was introduced on February 16, 1917. The language of the Resolution deserves mention: "Whereas the United States has been insidiously dragged toward entanglement in the European War and an artificial war sentiment has been engendered in this country through propaganda agitations; whereas the question as to whom belongs the right to decide our foreign policies and whether war shall be declared or shall not be declared, is lost sight of; therefore, be it: resolved; that the Congress order a referendum of the question as to whether or not we shall declare war to the people of these United States (except in case of threatened invasion) so that the will of the people on this vital question may be made known to the Congress.

Sec. 2. That (except in case of threatened invasion of the United States) the President shall take no action that may tend to involve the United States in war until the result of said referendum shall be made known to Congress."

51. Ibid, V. 54, Pt. 6, p. 590.

As a result of this resolution innumerable letters and telegrams were received commending such action, and this would lead to the reasonable assumption that there was a goodly share of the people who did not want the United States to enter the war without their express approval.

Contemporaneously, William Jennings Bryan, who had served as Secretary of State under Wilson prior to the appointment of Lansing, spoke favorably toward the referendum in suggesting alternatives for war. ⁵² The Survey ⁵³ describes an incident in Chicago: "Let the people decide" was flashed on the screens of several Chicago moving picture houses. At the door of each movie were ballot boxes where, for three days, thousands of people who sat in the audiences registered by a vote of five to one that the United States should keep out of the European war. Of course, this was an isolated instance, but it serves as an indication of popular opinion at the time. The distinction between a popular and true public opinion, which will be further discussed, should also be observed.

⁵⁴ The Emergency Peace Federation meeting, the week of March 19, 1917, to recommend measures to maintain United States neutrality advised, among other things, the taking of a popular referendum on war before entering the conflict.

52. The Survey, February 10, 1917, V. 237, p. 550.

53. Ibid, p. 579.

54. Included in the membership of the Federation were David Starr Jordan, Edward P. Cheney, Professor of European History at University of Pa., Arthur LeSeuer, representative of the national labor organizations and William I. Hull, Professor of International law at Swarthmore College.

It was but a relatively few days later that Congress, acting in special session amidst a scene of intense emotion, superficial patriotism and unusual excitement, declared war upon Germany, motivated by the recommendation of President Wilson. As could be easily anticipated all talk of pacifism, peace plans, and war referendum was submerged in the ensuing war years of feverish preparation and misdirected activity which plunged the productive efforts of a great nation into a wasteful, ill-considered war.

But with a typical spontaneity apparently inherent in the nature of popular government, the convulsive post war period saw the renewal of the move to inaugurate and establish a national war referendum. However, from the beginning there was little hope for the success of such measures because the aftermath of the World War was punctuated with a tremendous variety of peace plans and organizations. The League of Nations, the Versailles Treaty, and the World Court appeared to many to promise adequate security against the menace of further war.

Even before the Versailles negotiations had been concluded, the war referendum, incidentally, became the object of discussion while the Diplomatic and Consular Bill was being debated in the House on January 21, 1919, Representative Dill of Washington, in remarking upon the bill, suggested a world

55. The efforts of the war referendum enthusiasts assumes a new validity in view of the disintegration of the League and World Court which were accepted as superior peace proposals as beside the war referendum.

56. Congressional Record, V. 57, Pt. 2, p. 1823, Jan. 21, 1919.

league of peoples for peace which would universally employ the war referendum principle to reenforce the coming League of Nations which appeared as a certain and positive outgrowth of the Versailles Treaty. Dill said, "We boast of democracy in the United States, but even here the people cannot declare war or peace although one step has been taken in this direction by giving that authority to the representatives of the people." Continuing, Dill further said in effect, that history shows that while Congress does possess the war power, in reality the President exercises it, that Congress has always declared war when the President wanted war. The Washington representative elaborated the statement by pointing out that this situation was true of the War of 1812, the Mexican War, the Spanish-American War, the World War and will probably be true of every war in which the United States engages so long as the present method for declaring war continues." Again quoting Dill: "If we would prevent war, we must place the war-making power of our government under the direct control of the people themselves just the same as must be done in other countries."

As the debate continued, various advantages of such a referendum were alluded to, among them the contention that, if the people be ignorant of international affairs, the responsibility of voting on war will cause them to educate them-

selves in such manner as will enable them to vote intelligently. He continued that international affairs need be no more complex than national affairs and are purposely made complex by statesmen of questionable motives and repute who attempt to mystify the public and keep foreign affairs beyond the ken of the common man by resorting to subterfuges. In addition, it was implied by the Congressman from Washington, that while the people may make mistakes it is better for them to suffer from their own mistakes than from the mistakes of autocratic and despotic rulers, and, moreover, the people may learn from the experience of their errors whereas rulers have not. In concluding his remarks, the Washington Representative termed any opposition to the movement as being an outright admission that the people cannot be trusted. Newspaper editors, he said, will ridicule it as socialistic and bolshevistic; and that this same hostile pressure group will denounce the proposition as Utopian and impractical,

58. Rousseau in his Social Contract, Tozer's Translation, London, had assumed the premise that if the general will took a stand contrary to what appeared to be the best interests of the state that popular judgment was still to be upheld because the people so wished such a situation. In reality, the people, right or wrong, in fact were always right since it was their mandate.

59. Congressional Record, V.57, pt.2, p.1823, Achille Loria, noted Italian sociologist, after studying the causes of 268 wars decided that 258 were due to trade, territorial and other economic causes and that the other 28, while said to have been religious were greatly influenced by economic causes. According to F. A. Ward and Alexander Bottzly, who have made a thorough study of wars during the last four hundred years, practically all of the leading nations of Europe have been in a state of war more than one-half of that time. (Spain 257 years, Russia 238 years, Turkey 232, Austria 211, England 207 and France 192 out of 400). Surely, the people could not compile a record of any worse proportions.

all of which the dissenters will show not by fact, logic, or explanation, but by resorting to bombast and emotional appeal based on hypocritical intentions.

With the coming of the era of artificial prosperity following the post war depression, the demand for a war referendum was somewhat hushed by the apparent, though mistaken, security of economic abundance and international good feeling supported by treaties and international peace organizations. But this decade of false negotiations and uneconomic production and credit extension, was to result in a world depression which was almost immediately manifested in an atmosphere of international jealousy, dispute, and general discord marked by an absence of good faith and sincere efforts to maintain peace and rehabilitate the economic structure. Consequently, there was nothing remarkable about the recurrence of the movement for a national war referendum in the United States even before the financial crisis of October, 1929.

The war referendum again attracted attention when Senator Ladd of North Dakota introduced into the upper house a resolution (Senate Resolution 8, December, 1923) that "it is the sense of the Senate that no declaration of war by Congress and no active^{OP} war by the Executive branch of the government of the United States shall be taken except to suppress insurrection or repel invasion as provided by Congress, until the question at issue shall be submitted to a referendum vote of the U. S.

60. Ibid, V. 64, Pt. 6, p. 93, December 3, 1923.

On December 6, three days later, Senator Ladd introduced Senate Joint Resolution 8,⁶¹ which went a step further by proposing an amendment to the Constitution to the effect that "except in case of invasion or a danger so imminent as to admit of no delay, the Congress shall not exercise the power to declare a war or to declare the existence of a state of war until such question shall have been submitted to a vote of the qualified electors of the several states." Moreover, the President was to have power, with the approval of the Senate, to enter into treaties with foreign powers stipulating that the contracting parties should not declare or levy war against one another until the question of declaring or levying war had been referred to the qualified electors of the countries proposing the same and subject to the approval of each national electorate. Both resolutions found their way to the Senate Committee on the Judiciary where they were pigeonholed. In 1926, Senator Dill again proposed a resolution⁶² (Senate Joint Resolution 102) which provided for a war amendment like his former plans. A number of resolutions entailing similar amendments were introduced shortly after by members of the House of Representatives. In the first session of the 68th Congress, Wolff of Missouri proposed such an amendment⁶³ (House Joint Resolution 134) which was identical in text to the Dill resolution.

61. Ibid, V. 64, Pt. 6, P. 135, December 6, 1923.
 62. Ibid, V. 66, Pt. 1, p. 830, February, 1926.
 63. Ibid, V. 67, Pt. 1, p. 905, June, 1927.

Something more original was suggested during the 69th Congress by Representative Evans of Montana whose bill read, "That no war of aggression shall be waged by the army or navy of the United States except upon a declaration of war by the Congress, ratified and approved by a majority of the legal votes cast upon the question of war in a popular plebiscite to be held in a majority of the Congressional Districts of the United States". Up to this time it had been assumed that all wars ever waged by the United States had been strictly defensive in character. Because no action was taken upon his resolution, he reintroduced his idea (House Joint Resolution 19) in the 70th Congress where it was consigned to oblivion with the rest of similar measures. At the same session, a supplementary resolution to that of Evans was brought before the House by Henry R. Rathbone of Illinois whose resolution that "no war not strictly defensive shall be waged by the United States except upon a declaration of war by the Congress and such declaration shall not be valid unless ratified at a special election by a majority of the voters of the United States". The definition of "strictly" and "not strictly defensive" were terms left to the interpretation of Congress.

Representative Hamilton Fish of New York again pro-

64. Ibid, V. 67, Pt. 1, P. 905, June, 1929.
 65. Ibid, V. 67, Pt. 2, P.2277, January, 1926.

mulgated the issue before Congress and once more it was in the form of a joint resolution: ⁶⁶ "The Congress shall have power to declare war, but war except in the defense of the United States shall not be waged by the United States until a declaration of war by Congress shall have been ratified by a majority of the qualified electors in the several states in the manner provided by each state for choosing representatives in Congress at a time which the President shall fix immediately following such declaration. But when an actual state of war exists the President shall have power to recognize it and to take appropriate action to terminate it."

Fish suggested the bill as the logical and natural step following the Kellogg Multilateral Treaty since the act of war is the highest act of sovereignty, "all consuming, all absorbing, involving the lives, the property and the happiness of all the people."⁶⁷ Fish regarded, and still does for that matter, the act of war as being on a different plane from other constitutional powers delegated to Congress.

The issue can be defined, Fish said, as the distinction between recognizing the democratic principle and submitting the supreme issue to the people on the one hand or refusing the people that right because of fear of the deliberate public mind and judgment on the other.

66. Ibid, V. 69, Pt. 1, P. 623-6.

67. Ibid, V. 69, Pt. 1, P. 647.

Alanson Houghton, then ambassador to Great Britain, was quoted as having backed the resolution since he held it was sympathetic to the Bryan arbitration treaties, and because Congress represented the people not upon the question of war or peace, but instead upon partisan issues.

On February 19, 1929, Senator Blease of South Carolina asked permission to reprint, in the Congressional Record,⁶⁸ two articles written by a high government official on the subjects of war and peace and containing methods of achieving the latter. He requested they be referred to the Committee on Foreign Relations. In elaborating the issue, Blease commented, "Personally I favored a vote of the people before going into the World War and still do believe we would not have had any war if the people had voted thereon".

Aside from resolutions on war plebiscites, numerous resolutions intended to decrease the possibilities of war were also introduced into Congress during this period. Among such resolutions were those to curb profiting in time of war and provide for the draft of property for the national defense in a war crisis: House Joint Resolution (23) as submitted⁶⁹ resolved: "That in the event of existence of a state of war waged by the United States against any foreign government or other common enemy, Congress shall have power, when in its

68. Ibid, V. 90, pp. 3314-3315, February 19, 1929

69. Ibid, V. 69, Pt. 3, p. 2345.

estimation the emergency requires it. To:--

(a) Conscript for the purpose of conducting such war the persons of its citizens and such portion of the money, industries, and property of the United States or any of its possessions or inhabitants of said United States of America wheresoever situated as Congress may deem necessary or advisable in the prosecution thereof.

(b) Take such steps as may be deemed necessary to stabilize prices of services and all commodities declared to be essential, whereas such services and commodities are required by the Government or civilian population."

This above contribution appears to have anticipated the second section of the Ludlow Resolution offered for consideration in 1935. Senator Frazier's action in the direction of complete pacifism is particularly interesting because his anti-war amendment read "that war for any purpose shall be illegal and neither the United States nor any state or territory thereof--shall prepare for, declare, engage in or carry on war or other armed conflict, expedition, invasion, or undertaking within or without the United States nor shall any funds be raised or appropriated or expended for such purpose." This is practically all that was included in the resolution. The other sections merely provided that all provisions of the

70. Ibid, 69th Congress, V. 67, p. 8021, April, 1926.

Constitution which are inconsistent with this amendment are null and void, and Congress shall have power to enact appropriate legislation to give effect to it. Strangely enough, no provision was made for the disposition of the Army and Navy or defense in case of invasion.

Returning to the course of the national war referendum movement, the next development was through the efforts of Representative Frear of Wisconsin.⁷¹ His approach was to preclude a declaration of war by Congress until "the war proposition shall have been submitted by the President to the several states and a majority of the states at general or special elections called by the governors thereof shall have approved the same." For three sessions, Frear introduced this amendment with a section added to the effect that Congress should by law provide for the punishment of individuals, associations, or corporations who wilfully publish or disseminate false propaganda.

Shortly thereafter, there was brought before the Congress a war referendum amendment which attracted nation-wide attention and interest. Prior to this time, the war referendum provoked little more than academic argument, occasional Congressional consideration, and brief, isolated public discussion.⁷² This particular resolution, the Ludlow Amendment,

71. *Ibid.* V. 78, Pt. 1, P. 103, January 4, 1934

72. The resolution implied no franchise discrimination according to its author.

was not subjected to protracted action of Congress. Probably the chief reason for the prominence which the Ludlow Resolution attained was due to political maneuverings and party politics. The Republicans were anxious to discredit the Roosevelt administration and the issue cut across strict party lines to such an extent as to cause a serious controversy within the ranks of the Democratic party. Representative Louis Ludlow proposed the idea in the form of a joint resolution in 1935, and attached to it a second section designated to eliminate the profit motive for war. The resolution:

Section 1. "Except in the event of an invasion of the United States or its territorial possessions and attack upon its citizens residing therein, the authority of Congress to declare war shall not become effective until confirmed by a majority of all votes cast thereon in a nation wide referendum. Congress, when it deems a national crisis to exist, may by concurrent resolution refer the question of war or peace to the citizens of the states, the question to be voted on being 'Shall the United States declare war on _____?' Congress may otherwise by law provide for the enforcement of this section.

Section 2. Whenever war is declared the President shall immediately conscript and take over for use by the government all the public and private war properties, yards, factories, and

73. Ludlow, Hell or Heaven, 1937, p. 6-7.

supplies, fixing the compensation for private properties temporarily employed for war purposes at a rate not in excess of four per centum, based on tax values assessed in year preceding the war."

Like all similar resolutions this one was delegated to committee consideration where it was apparently destined to remain. The difference between the Ludlow Resolution and others of a similar character is that this peace amendment resolution forced its way to the open floor of the House while others have slumbered or died in the Committee. This action was accomplished upon the written demand of 218 Congressmen through petition, and stands as a reflection of public sentiment which astonished the Roosevelt administration. Administration forces proved too strong, however, and the measure was again delegated to the Judiciary Committee of the House. On^{At}_n January 10, 1938, by a vote of 209 to 188 a motion to discharge House Bill No. 89 (Ludlow Amendment according to its tabulation as introduced in each particular session) from for committee consideration was defeated. The defeat of the motion was effected only after the administration forces of Hull, Farley and Roosevelt brought tremendous political pressure upon Democratic Congressmen to recant their affirmative stands to consider the measure. President Roosevelt had sent a letter to the Speaker of the House requesting its defeat; the day previous Secretary of State Hull had~~y~~ made a plea against its consideration.

The switch of eleven votes would have changed the outcome. In any case, the vote cut across party lines and was cast in the face of Roosevelt's personal appeal. Several weeks before, La Follette and Capper had introduced similar Constitutional amendments in the Senate. Certainly, the entire procedure indicated a lack of confidence in the President's foreign policy. The Ludlow Amendment obviously represented and still expresses a large body of pacifist opinion.

During this period of repeated international crises precipitated by a militant Japan and the European dictators, there was small opportunity for the slightest success to accompany the war referendum resolutions. Nevertheless, there continued a constant agitation in Congress for the adoption of the resolution in one form or another. Such proposed legislation was brought before each session of Congress and heard in committees where it was allowed to remain, but not without discussion on the floor of each house of Congress. The war referendum merited unusual discussion in the special session of Congress called in 1939, by President Roosevelt. The most important consideration of the principle involved grew out of a debate on the Pittman Neutrality bill which embodies a revision of the former Neutrality Act which had been the result of the Senate Munitions Investigating Committee. Debate on the Pittman measure had been long and heated.

Senator La Follette of Wisconsin arose and proposed the insertion of several new sections to the neutrality legislation pending. The proposed amendments follow and are quoted in full because they constitute a particularly complete mechanism for the taking of such a referendum:⁷⁴

Section A. Except in case of attack by armed forces, actual or immediately threatened, upon the United States or its territorial possessions or by any non-American nation against any country in the Western Hemisphere, a national advisory election shall be held in the several states upon the question of war or peace prior to any declaration of war by the Congress.

Section B. Every citizen of the United States qualified to vote according to the laws of the state of which he or she is a resident, shall be entitled to vote at such an election. Such election shall be held and conducted under such rules and regulations as may be prescribed by the United States Referendum Election Board (hereinafter referred to as the board) except that such election shall be by written secret ballot and shall be conducted as nearly as possible in accordance with the laws of the several states for the conduct of their respective state elections.

Section. C. There is hereby created a United States Referendum Election Board to be composed of the President of the Senate, and three members of the Senate Committee on Foreign

74. Congressional Record. V. 85, pp987-996, November 3, 1939.

Relations (appointed by President of Senate) and only two of the same political party, three members of Committee of Foreign Affairs of the House. Vacancies are filled by original method of appointing, i.e., by the President of the Senate who shall have no vote except in case of tie. No extra compensation except travel expense shall be provided the Committee.

Section D. Board herein provided for to be called whenever four or more members of the Board file with Secretary of State of United States written demand therefor. Question to be submitted at election shall be "Under existing conditions shall the United States go to war?" The Secretary of State shall by proclamation fix the day of election which shall be held not less than fifteen days from the filing with him of the demand for the election as proposed.

Section E. In conducting such election the board shall in so far as possible use state election officials and polling places provided for by state laws.

Section F. Authorized appropriation of sum out of the Treasury for the cost of such an election.

Section G. Board shall make public immediately the results of each national advisory election, together with the numbers of votes cast in each state for and against the question submitted to the electorate. La Follette apparently realizing the futility of presenting the mandatory war referendum measure because of the critical foreign situation, relied upon an

alternate plan to make the principle effective through the taking of an advisory referendum which would not legally bind Congress in any way beyond the conduct of such a plebiscite. In arguing for the adoption of these amendments, La Follette pointed out that the Democratic Convention of 1924, adopted a resolution stating, "Our government should secure with all nations a joint agreement for world disarmament and a referendum on war except in case of actual or threatened attack. Those who furnish the blood and bear the burdens of war, should, whenever possible, be consulted before the supreme sacrifice is required of them." Typical decisive rebuttal was made by Barkley, Mc Kellar, Connally and Pittman. Borah and Norris, did, however, make valid criticisms as to the difficulty of making the proposition work, and the now deceased Senator from Idaho announced that he was in complete sympathy with the principle expressed in La Follette's proposed amendments to the Neutrality Act. Letters were read from the Secretary of State and the Secretary of War on the subject of the referendum.⁷⁵ They follow in part: Letter from Secretary of State Cordell Hull to Senator Hatch on Senate Joint Resolution 84, May 16, 1939, proposing an amendment to the Constitution of the United States for a referendum on war: "When a similar proposal was receiving consideration in December, 1937, I stated to the press that 'from the standpoint of prompting peace and keeping this country out of war', I am unable to see the practicability or wisdom of this measure.

The preservation of peace is the cornerstone of the foreign policy of the United States. I am convinced that the present Constitutional provision, under which the power to declare war rests with Congress, is far more satisfactory from the standpoint of keeping the nation out of war than would be the plan contemplated in the proposed referendum. It is my belief that this plan would seriously impair the ability of the government to safeguard the peace of our people." Letter from Secretary of War Harry H. Woodring to the House of Representatives, June 9, 1939:

"Careful consideration and study of Senate Joint Resolution 84 convinced me that the adoption of a Constitutional amendment as set forth in that resolution would seriously hamper and restrict the War Department in carrying out its primary mission of defending the United States and its possessions, and might in some cases even jeopardize the successful accomplishment of that mission and thus result in national disaster. Accordingly, the War Department is opposed to the enactment of Senate Joint Resolution No. 84."

The vote on the La Follette amendment resulted in the rejection of the measure by 73-17, although many voting against the amendment did so because of the particular method advocated rather than the broad principle involved.

It is interesting to note that Representative Louis Ludlow

of Indiana who had earlier introduced a war referendum amendment, voted against the resolution to adjourn this special session of Congress sine die, and in stating his reason remarked that he did so because it was his conviction that Congress should constantly remain in session while there was any danger of becoming involved in the European war. He regarded it as an anomaly, and quite correctly so, that the legislative branch which is invested with the war making power, should be absent from Washington while decisions were being made by the Executive branch that might mean involvement in a foreign war.

Despite a situation where there was only a remote, if any possibility for the passage of^a war referendum resolution, the backers of the measure continued to project the measure before Congress. Similar resolutions to those discussed above are now pending before this present session of Congress convened on the 3rd of January, 1940. There is every reason to believe that the issue of a war referendum will remain before Congress for many years, possibly until it has received the approbation of Congress.

76. Ibid, V. 85, Pt. 2, P. 864, App. Nov. 3, 1939.

CHAPTER THREE

The Referendum as an Applied Instrument of Popular Government

The preceding pages have endeavored to show the origin and development of the movement for popular participation in government through the means of the referendum. During the progress of this movement the system itself had been undergoing a process of evolution. The contrast between the system of popular government as of the first year of American independence and the 20th century is self evident. In analyzing the record of the effort to make popular government effective it should be noted where this system has been in vogue it has contributed inestimably to the permanence of those institutions to which it has been applied. Bryce comments on the process:

"A general survey of this branch of our inquiry leads to the conclusion that the peoples of the several states in the exercise of this, their highest function, show little of that haste, that recklessness, that love of change for the sake of change, with which European theorists, both ancient and modern have been wont to credit democracy; and that the method of direct legislation by the citizens liable as it doubtless is to abuse, causes, in the present condition of the States, fewer evils than it prevents."

Much of this early popular government was of course the constitutional referendum.

77. Bryce, The American Commonwealth, 1908, p. 457, 2nd Edition.

Yet it is indicative of the principle involved in the war plebiscite referendum. The opponents of popular ratification had predicted that this method could only lead to frequent and ill advised changes of the fundamental law. Quite to the contrary however the reverse has been true. The history of those state Constitutions proclaimed during the early years of American independence shows the two earliest were displaced within two years and one-half of the remainder barely lasted through the 18th century, and it was not long before these were assailed because of popular dissatisfaction. The instability of the French constitutions stands as a similar illustration where there has been a deprivation of the values attaching to a real popular satisfaction and sanction. In sharp contrast is the permanent character of those American institutions of government where the people have had the largest possible share in the process. The reason for such is not a profound one. It is simply because the people were consulted at each step in the erection of a state government, and the decision of the electorate in determining issues has been accepted as a conclusive judgment. The explanation of the failure of other constitutions adopted during the same period apparently lies in the fact that they were the products of small bodies of men who assumed the authority for the framing

78. The Constitution of Massachusetts, Maine, and Wisconsin are good examples.

of such instruments without submitting the result to the people as a method of determining the acceptability of such documents. Failing to meet popular approval, the dissatisfaction of certain elements of the people produced a situation where there was constant demand for change. Of this process Borgeaud writes:

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"By the popular vote upon constitutional and allied measures the two essential conditions of any amendment procedure, so hard to harmonize, yet indispensable, are attained; namely, the overcoming, on the one hand, of the rigidity of written texts, by facilitating amendments, and on the other, the stability and prestige of the Constitution. If the first of these conditions is fulfilled, the principal defect which the partisans of an exclusively customary public law find in written constitutions is corrected, and if the second is fulfilled the character which constitutes their principal merit is preserved. In this way the advantages of the English system are secured and the institutions of the democratic state obtain a fundamental guarantee which that system would be powerless to give. This twofold merit answers the obviously characteristic need of the times; ceaseless and rapid progress effected without violence and firmly securing its achievements by a powerful universally respected law."

79. Borgeaud, Adoption and Amendment of Constitutions, 1895, p. 346.

In a retrospective analysis of popular submission and ratification, one of the outstanding results has been its educational influence upon the American electorate. The American voter has a vast superiority over those of other nationalities when it comes to passing upon such questions. Once again the reason is apparent. Upon becoming a legislator, the American citizen reflected a new enthusiasm for his vote in government and reacted intelligently to the stimulus. In the process of popular participation a greater responsibility and more personal interest was placed upon the American electorate which assumed its new position without hesitation or disastrous consequence. To R^Ussseau, this evidence or lack of public interest was of primary importance in the state because it revealed its fundamental nature.⁸⁰

In the contemplation of a national war referendum, it is essential to review the record of this popular device in the several states of the Union and various foreign countries. Such an examination will furnish an insight into the practical workings of the referendum as to particular measures. For this purpose it is necessary to analyze the results of the referendum in states of widely different character.

Oregon is often cited as a state in which the referendum has attained unusual success. Prior to the adoption of the

80. R^Ussseau, Social Contract, 1895, Chap. 15, pp. 186-7.

referendum in 1902, the supporters~~of~~ of the device resolutely maintained that the system would provide a more sympathetic, efficient and responsive state government than was afforded under the existing representative government. The proposal was advocated as the means whereby the defects of corrupt⁸¹ representative government could be eliminated. A survey of the actual results of the adoption of the referendum indicates that the referendum in Oregon hasnot fulfilled the predictions of that group which urged its adoption or those who⁸² opposed it as a menace to representative democracy. In general, it can be said that the electorate has responded in greater numbers to the election of individuals than to a vote on referendum measures. The above quoted investigation shows also that there is a wide disparity in the number of votes cast upon measures depending apparently on the importance of the issue and the formation of a public opinion thereon. This failure of a large percentage of the electorate to cast a ballot on somewhat complicated measures lead to the conclusion that "it is a tacit admission on the part of the voters that they do not consider themselves competent to vote on various⁸³ proposals." The number voting seems, then, to depend in large measure upon the nature of the question submitted. Where the bill has been such that the public was informed and in a position

81. Schumacher, Thirty Years of the Peoples Rule in Oregon; An Analysis, Political Science Quarterly, V. 47, pp. 242,258.

82. Ibid.

83. Ibid. p. 245-246.

to understand its content "the judgment of the electorate
⁸⁴
 has usually been sound." In further interpreting the record
 of Oregon, the chief defect seems to be the fact that referen-
 dum proposals rest in the hands of a minority group which has
 the advantage of efficient organization. Thus in some cases,
 minority government has been produced instead of the expected
 popular democracy which was to be a genuine reflection of the
 people's wishes. As further evidence of this tendency, the
 legislature has been authoritatively shown, through a study
 of the subject, to be more responsive to the needs and desires
⁸⁵
 of the people than the direct legislation itself. Special
 elections in Oregon have repeatedly brought a larger vote than
 have those proposals submitted at regular elections.

Too often, conclusions as to the success of the state
 referendum are based on idealistic conceptions and rationali-
 zations. This causes an undue prejudice in behalf of the re-
 ferendum. The above discussion, to the contrary, is what has
 actually happened and possesses a validity not found in mere
 assumption motivated by personal feeling because it is the
 result of undeniable, tabulated figures.

The state of New York serves as an equally good illus-
 tration since that state undertook the popular ratification
⁸⁶
 of a new state constitution in the November, 1938, election.

84. Ibid. p. 247.

85. Ibid.

86. Editorial, "The People Vote 'Yes'", Christian Science
 Monitor Magazine, July 29, 1939, pages 7, 14.

Two years earlier the people had voted for a Constitutional Convention. The year following, delegates were selected by the voters, and the elected convention completed its assignment in time to present the document to the people in the fall of 1938. The instrument itself was submitted in the form of nine amendments all of which were the subject of controversy among the New York newspapers, political parties, and club organizations. The circumstances accompanying popular ratification were anything but desirable and the chances of popular approval appeared slim indeed. In addition, besides expressing themselves in nine separate constitutional propositions, the voters were faced with selecting a governor and electing the rest of a state and congressional ticket. The first amendment contained about eighty-five percent of the intended revisions including the Bill of Rights, state finances, municipal finances, home rule provisions, conservation and other technical and complex features. The New York newspapers were divided on all of the amendments which added to the voters' confusion. Civic groups were active in campaigning for and against the amendments. The first amendment, a very desirable one was adopted by a close margin. The second amendment was purely political in purpose and was designed to preserve Republican advantages in electoral districts. It was defeated to the credit of the electorate. The amendment providing for

collective bargaining and hour and wage regulation was passed by a two to one vote. Another politically conceived amendment to eliminate proportional representation was turned down in the face of strong political pressure. The public health insurance amendment was approved by a majority of over two to one. Of the nine amendments six were adopted and three rejected. Of all the measures included in the nine amendments, 95% were accepted. This popular Constitutional referendum was only the second since 1846. The Christian Science Monitor summarized the results by saying:

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"The referendum showed the voters to be essentially non-partisan, socially minded, sympathetic to reasonable protection of labor, jealous of home rule, and desirous of gearing the machinery of government to modern needs." While the results of this popular poll were indicative of good public judgment, the statistics should dispel any idealistic notions of the infallibility of the state referendum. This New York election showed a relatively small number of the electorate participated in the decision. The total vote of both candidates for governor was nearly five million. Of this number, about half registered judgments on the Constitutional amendments. IN this election, as in most throughout the Union, a vote of a majority of a minority of the actual voters determined the issues submitted. As a general rule, this suggests that the more thoughtful citizens, whose judgments are quite independent and intelligent, decide such elections.

The success of the referendum varies widely according to sections and states. The conclusions drawn from the experience of Oregon and New York are broadly representative and characteristic of the referendum as a popular political device actually being used.

The working of the referendum in Switzerland likewise offers a good study of the principle of government under consideration, especially since it applies to a Federal as well as Cantonal jurisdiction. In this small European country the popular referendum over Federal legislation is of three kinds.⁸⁸ First, the obligatory referendum under which all changes in the national constitution must be submitted to the affirmation of veto of the citizens. Second, is the optional referendum whereby 30,000 voters or eight cantons through their representatives may petition to have an act of the national legislature submitted to the voters. Beside these two the initiative is of the nature of the referendum but in essence is different. Concerning the functioning of the referendum in Switzerland, there is much prejudice and misunderstanding. One chief objection to the Swiss poll of the people is that it stands as an obstacle to progress. Yet, during a period of forty years in Switzerland, the Swiss Federal Legislature passed twenty-one constitutional amendments and of these sixteen were accepted by the people.

88. Strachey, op. cit. Chapter IV.

Over the same period, only two amendments were added to the Constitution of the United States. Whether this veto power of the Swiss people was exercised wisely in all these instances is a matter of dispute, but at no time has the Swiss electorate refused to sanction pressing or vital legislation. Nor have the voters of Switzerland ever manifested radical tendencies in the use of the referendum in any of its forms. It should also be noted that one of the outstanding values of the Swiss referendum is not seen in the actual referendum vote, but lies rather in preventing much corrupt and unnecessary legislation coming before the Legislative Assembly since it would be promptly rejected by the people. Log rolling and pork barreling techniques are not popular in Switzerland. One of the frequent arguments used against the referendum regardless of the country in which it is being employed, is that this dependence and reliance upon the public operates to destroy legislative responsibility and diverts the efforts of the representatives of the people. But this surely has not been the case in Switzerland where two hundred sixty-one laws were adopted by the Swiss Federal Legislature in a period of thirty-four years. Of this number, thirty were brought to a referendum and of these measures only nineteen were rejected. A number of far reaching acts were passed by the Federal Legislature which were not even subjected to popular action which each year invalidates only a small

percentage of the number of bills approved by the legislature. But the assumption should not be implied that even the Swiss referendum has met the extravagant promises and predictions of its enthusiastic supporters. For even in a country of small geographical proportions, there is generally cast a relatively light ballot although more important measures attract a somewhat larger vote which have often exceeded seventy percent of the total electorate. Notwithstanding these shortcomings, the record of the referendum in Switzerland is a good one and it has now become a vital and fundamental function of Swiss government. While changes have often been suggested in the form and application of the referendum, there is no longer any serious opposition to this democratic device in Switzerland.

The actual use of what closely approaches the proposed American national war referendum was employed by the Commonwealth of Australia during the World War. In Australia where the war-making power rests in the British Crown, there is a different situation from that in the United States where the war power reposes in the legislative assembly of the Federal government. But although the Constitution does not give the Commonwealth the power to declare war, it does give Australia the authority to prescribe its own laws regarding military service. Moreover, according to Section 128 of the Constitution, any proposed law for the alteration of the Constitution, in addition to being passed by an absolute majority of each House of Parliament, must be submitted to a referendum of the

electors in each state and must further be approved by a majority of the states and the electors who voted on the measure.⁸⁹ An unusual and interesting situation was created during the World War of 1914, when England appealed to her Dominions and Colonies for additional men to prosecute that war. Under the existing provisions of the Australian Constitution it was expected a question would arise as to whether foreign military service should be compulsory. On September 28, 1916, the Parliament of Australia passed an "Act to submit to a referendum a question in relation to military service abroad." The plebiscite was held on October 28, of the same year and the following question was put before the electors:--

" Are you in favor of the government, having in this grave emergency, the same compulsory powers over citizens in regard to requiring their military service, for the term of this war; outside the Commonwealth, as it now has in regard to military service within the Commonwealth." The voters of Australia rejected the proposal of extending compulsory enlistment by a vote of 1,160,033 to 1,087,557 with 82.5% of the electorate voting. A second referendum as to military service abroad was placed before the electorate of Australia on December 21, 1917 the question this time being: "Are you in favor of the proposal of the Commonwealth Government for reinforcing the Australian Imperial Force over sea."

89. Munro, The Governments of Europe, 1931, pages 367-368.

The proposal was that while voluntary enlistment was to continue, compulsory reinforcements were to be called up by ballot to make the total troop additions seven thousand a month. Once more the bill was rejected, the vote being 1,181,747 "No" and 1,015,159 "Yes".⁹⁰ The outcome of that vote stands as a tribute not only to the good judgment of the people of Australia, but one also which inspires a new confidence in the democratic way of government.

In surveying the attitude of nearly all foreign countries on the question of a popular war referendum, it appears that the governments of these nations are adverse to the proposal. Even the national constitutions which made their appearance following the World War do not refer declarations of war to a popular vote, but provide instead that war shall be declared and peace concluded by the executives of the various states upon the affirmation of their respective representative bodies. Such was the case with Poland, Esthonia, Finland, Greece, and Germany under its former Weimar Constitution.⁹¹ Several European national constitutions expressly provide that the war power shall be withheld from popular plebiscite while permitting a number of other matters to the subject to popular referendum. The adoption of such a war referendum would probably make small difference in the course of events in Europe because the

90. Carl Myers, op.cit., p. 322-326.

91. Munro, op.cit., p. 630.

populace has been reared out of a background of extreme nationalism, forced military service, and a controlled press. These conditions produce a regimented public which is poorly informed and conditioned to the traditions and methods of power politics.

The success or failure of such a war referendum apparently depends to a large degree upon conditions and circumstances peculiar to the country which employs it. Without any doubt, the referendum has proved of value in the States of the American Union, the Australian Commonwealth, and the Swiss Republic, although it has certain defects, at least in application, which cannot be ignored. Especially is this a realistic truth when proposing that this American nation proceed from a state to a federal referendum. Consequently, any conclusion as to the advisability of that transition rests not on assumed hypotheses, but upon an observation of practical situations and facts.

CHAPTER FOUR

Against the War Referendum

In approaching the opposing and supporting arguments for a national war referendum in the United States, the fact is at once apparent that there is a wide gulf separating the assumptions of proponents and those who stand for a static concept as to the incidence of the war power. If it were possible to reduce the conflict of views to a common basis for action, the problem would resolve itself into relatively simple proportions. In essence, there is truth in both positions, but a reconciliation of basic premises is more than could be expected. The reality of the controversy to a large extent rests in the difference of opinion as to what our foreign policy should be. The disparity between the isolationist and internationalist schools adds to the intricacy and complexity of enacting and following a stable and intelligent foreign policy. Not to be ignored, moreover, are political, partisan, and vested interests which make any solution impermanent at best.

The framers of the United States Constitution sought to limit the war power of the Executive branch by providing that Congress alone should have the right to declare war and that the Senate should share the President's treaty making power.⁹² Of this Thomas Jefferson wrote to James Madison:

"We have already given in example one effectual check to the dog of war by transferring the power of declaring war from executive to the legislative body, from those who are to spend to those that are to pay."

92. Ludlow, op.cit. p. 15.

Mention has already been made that Executive usurpation of the war power delegated to the Legislature, can be termed as an accomplished fact. Yet most of the negative arguments on this issue stem from the belief that the war power still remains with Congress. Despite the acknowledgement that the Executive has extended his authority beyond his constitutional jurisdiction, it should not be hastily concluded that opposition to the war referendum lacks foundation and validity as will readily be seen.

One of the most frequently used arguments against the war referendum is that such a device is a challenge to our whole system of representative government. This criticism of the war plebiscite, that it would tend to undermine our representative structure of government, is not based on a denial that it is more democratic than the present system; nor does this belief imply that national referendums could not be developed alongside our present representative system. Instead it calls attention to the fact that this proposal is motivated by a wholly different philosophy of government as yet untried on a national scale. President Roosevelt expressed deep concern over this disintegrating effect of the war amendment as embodied in the Ludlow Resolution. He said: "I consider that the proposed amendment would be impracticable in its application and incompatible with our representative form of government. Such an amendment would cripple any President in

his conduct of our foreign relations and it would encourage nations to believe that could violate America's rights with impunity." To think that the people at large are better equipped to deal with such questions as war than their chosen representatives who are well informed and especially qualified to handle such constructions of policy as affect the national interest, is a broad assumption. The value of our representative form of government lies in its greater efficiency of action resulting from centralized, well studied decisions based on close scrutiny and the availability of all the pertinent facts regarding a particular situation. If the representatives do not reflect the sentiments of their constituencies, the remedy lies at the polls, but not in the destruction of a system which has accomplished much that could not have succeeded under a completely popular form of government.

It is urged, however, that Congress could at least take an advisory vote of the national electorate on the subject of going to war, but this could not be advisory in any honest sense because the decision of the government must be composed of an intricate series of problems which cannot be isolated. Any government dependent on a war referendum for advice and action could maintain itself only in a world of static and unchanging conditions while such a plebiscite was being taken. Foreign policy cannot be directed, or controlled with any success or effectiveness if it must wait upon a popular mandate

which quite possibly would be contrary to the best interest of the United States. Thus the adoption of such an amendment would tend to weaken rather than extend the authority of democracy on the basis that representative government is dependent upon a full sense of responsibility for successful functioning. To relieve Congress of that responsibility in its most vital decision would unquestionably weaken its sense of responsibility in making lesser decisions. The representative principle has been proved as the most successful mechanism, yet found for the coordination of government and a complex society.

Supplementary to the above contention is the impossibility of sufficiently informing the electorate upon developments in periods of crises. Even if such knowledge could be the common property of every voter there is good reason to feel that the consequent action would be unintelligent principally because the average voter is motivated by provincial interests and decisions formed prior to the crystallization of any true personal opinion.

The war referendum is advocated very largely on the tenet that it will furnish the security from war which is vital to an establishment of domestic equilibrium from every standpoint. Undeniably this is a logical powerful objection. No one seriously questions that the passage of such a war amendment would cause the American voter to be subjected to a barrage of propa

ganda any time there was the slightest indication that the question of going to war was to be projected before the people. The public would soon be transformed from a body desiring the continuation of peace to an emotional, excited people who would make the referendum an empty gesture. In a subsequent
 93
 analysis of war time reaction of the public the stability of the public to adhere to its convictions in the face of a high pressure propaganda campaign is revealed as little more than a fallacy. Naturally, there is much appeal, particularly of a political complexion in commending the sound judgment of the people, but objective, practical situations can not be met by wishful thinking on the part of enthusiastic supporters or politically minded opportunists. War is an issue which calls for the greatest of calm, reflective deliberation--a deliberation that can best be afforded through the channels of representative government.

When the question of war came to vote before the electorate, the (evil) influences of militarists, armament makers, jingo newspaper editors, and all the multifarious forces which make for war sentiment in time of crisis, would be brought to bear upon the people who are not impervious to such campaigns. The reaction of the American people in the last war to the effects of propaganda is noteworthy as an illustration. Sidney
 94
 Rogerson has written of the inability of the American public

93. Chapter VI of this paper.

94. Rogerson, Propaganda in the Next War, 1938, Chap. 2&3.

to comprehend or discern the prosecution of propaganda techniques. The susceptibility of the American people to such pressure tactics is alarmingly illustrated even now. (the early phase of World War II in which the Germans have shown marked superiority). Everywhere there is the fatalistic assertion that America must inevitably be drawn into the European conflict. A few slogans describing democracy, a powerful foreign propaganda machine, and the gullability of the American voter have interacted to produce a situation where the United States is in imminent danger of again committing the blunder of 1917. To consign the war power to such a thin superficial safeguard as that of an easily aroused public could in no wise be a sane, progressive step to follow at such a time as this.

The outcome of a war plebiscite could be influenced materially (Or even decisively) by the way in which the war question was submitted. William E. Borah, late Senator from Idaho and a staunch isolationist, said in debate in the Senate that he felt it was virtually impossible to frame an amendment which would be impartial and flexible enough to meet the great variety of situations which would arise in the application of the referendum. Borah expressed this doubt notwithstanding that he agreed in principle with the war amendment measure. Senator Norris of Nebraska sustained this objection and said in addition that while he voted "No", to the war declaration of April, 1917, it was contrary to the sentiments of his con-

stituents who demanded America's entrance into the war even before 1917. Borah, as a member of the Senate Judiciary Committee, stated the real difficulty of the war referendum lay in being unable to agree upon or find any method of putting the principle into practice and for this reason voted against the La Follette amendment as did Norris.

Another weakness of the war referendum lies in the "except" clause which is found in most of the referendum resolutions. Who, it can be logically inquired, is to interpret the phraseology of any war referendum amendment. Most of the resolutions have not included such an explanation in their contents. The sponsors of these measures have frequently testified that such interpretation is the duty of Congress. What Congress may construe as a war of defense or invasion very possibly could be totally contrary to ^{the} real purpose of the amendment. If Congress so acted, and favored war such a move could easily be declared as a defense against invasion, whatever the circumstances. If the President instigated a series of events to lead to a state of hostilities, Congress would be forced to a declaration of war without even consulting the people. The time element is a factor to be taken into account since decisions would have to be made very quickly at such a critical time. Lacking time to set up the machinery for a national referendum which would take longer than often thought, the President if not Congress, would be forced to act independently.

Therefore, in the end the people would be called upon to sanction a realized situation for once hostilities have begun formal ratification would be mere observance of procedure, given the agencies of propaganda which are at the disposal and creation of the government which is prosecuting the war.

When there is a conflict of interest between the United States and another country, the President and his agents, the State Department seek a peaceful composition of that dispute. Failing in this effort and faced with the necessity for war, the President will from the beginning start to influence public opinion in support of administration policy to nullify the consequences of a war referendum. Under these circumstances, no administration could conduct any foreign policy at all without exposing the public to a constant stream of propaganda to cause adherence to that policy. The more delicate the relations, the more powerful the propaganda necessary; the result would be disastrous to the modicum of free government which is possessed by the American people.

Enactment of such a war amendment would increase the danger of resort in time of crisis to a totalitarian dictatorship. These alarming words are not used loosely. Should the outcome of a referendum be contrary to administrative policy, the temptation to set up an iron clad military dictatorship would be irresistible. What else could a president do under such circumstances? The only safe method of incorporating this proviso into the Constitution of the United States would be the certainty that it would never be employed.

Implied in the adoption of the popular plebiscite is the abandonment of the Monroe Doctrine. America's security is founded upon this concept which has prevented any foreign encroachment in the Western Hemisphere. To forsake a policy that is of the greatest protection to America is resignation to the forces of aggression, economic eclipse and totalitarian rule which would then be in an even more threatening position to dominate the United States with subversive creeds and influences. Why then, resort to untried panaceas at such a critical juncture of our development and progress?

One of the most serious charges to be made against a war referendum is that of poor timing. Foreign nations would interpret its adoption as a triumph for the isolationist element which would preclude close cooperation among the democracies and any possibility of establishing a bulwark against rampant aggression. America cannot forever remain apart from the workings of world politics as has been demonstrated many times. So definitely are our interests linked up to those of the world at large that the United States has no choice but to assume its proper place in the orbit of world affairs with the earnest purpose of removing those causes which have precipitated the present crisis. Surely the Executive Department takes complete cognizance of the world scene and can be trusted above all others not to involve us in war if that step be incompatible with the best interest of this country.

This device of polling the public is no substantial or concrete implementation of our desire for peace. Artificial forms and enactments are not the solution to any profound problem. The process of legislation by itself cannot provide a fundamental remedy for war which is deep rooted in the contemporary order. A vote of 51% of the electorate would not make any war right or wrong when taken as the final, distinct determinant. The weaknesses of popular government have been pointed out.

The transposition of the war power from Congress to the vicissitudes and whimsies of popular election cannot be regarded as an advance in our political technique, but rather should be viewed as an infringement upon the basic principles of the American system of government.

CHAPTER FIVE

Adopt The War Referendum?--Yes!

A quarter of a century has elapsed since the war referendum was first formally proposed in Congress. During that time, the principle embodied within it has undergone many modifications as to phraseology, purpose, and support marshalled in its behalf. But the underlying doctrine remains identical. So it is not surprising that its persistent advocacy represents a considerable body of opinion and a concept that warrants full and complete investigation of its possibilities.

The possible approaches to the affirmative arguments fall for this purpose into two classifications. First, to treat the war referendum as a distinct entity to be employed according to the current political theory of democracy. The other avenue of discussion is to regard it in an environment of real politics as they are practiced today. The inter-relationship of the two is such that neither method used separately would suffice. Presumably, we as a nation are engaged in an effort to improve what we understand as democracy. The theory motivating democracy is apparently the objective which we are seeking. Our recognized obligation to proceed in that direction is not seriously disputed. But the method of attaining that end is controversial. To attempt to apply pure theory which is not tempered with reality would be absurd. With this perspective in view, the supporting arguments are presented.

The modern representative system is conceived as the instrument through which the individual, who is recognized as

the source of state sovereignty, makes known his will by transferring his political capacity to an established agent; hence, the representative system has come to be regarded as an established agency, autonomous in all practical relations and having the peculiar quality of relieving the individual of his political rights and capacities after transferring by means of votes, his agency to another person as his representative. Thus sovereignty, for all practical purposes, has been conceded through the electoral system to a class of men who are chosen for this purpose upon the basis of nomination by ballot and the assumption that they are eminently fitted with a capacity to solve the problems of government. This doctrine⁹⁶ of the transfer of political capacity is the underlying dogma of all representative government. Perhaps it is this fact that accounts for the artificial character of recent administrative government, and the anomaly whereby the executive has increased his authority by taking advantage of the ambiguous status in which administration has been left, and converted it into enlarged powers despite the system of checks and balances erected within the Constitution.⁹⁷ This theory of government, as a combination of instruments which act for the public will, assumes the premise that inherent political right and obligation may be shifted and delegated.

96. Rousseau, op.cit., Chapter 15.

97. Beard, American Government and Politics, 1935 (7th Ed.) p.54

The distrust and partial collapse of the representative system is thus readily understood for such disintegration is inherent in its fundamental assumption that the public will can be adequately projected through representatives--that the will of one representative can be substituted for another or many others. Yet because life has everywhere become more intricate there is the apparent necessity for the representative procedure which is so widely accepted and endorsed as to give it almost universal recognition. At present, the basic approach to nearly all problems of government is that one political agent can think, act and legislate for others. The real problem is how the individual can be ^{re}presented at all, or how representation can mean anything at all within the prevailing system of facts, prejudices, hypotheses and ideas which comprise the mind of the American public.

This query is usually answered by supposing one of two extremes, the first of which is to suppose a representative who is little more than a mouthpiece of his constituents who in all likelihood have divergent opinions; in fact, an agent who is without initiative who merely records, so far as possible, the opinion of the people in his capacity as a delegate. Or it can be assumed at the opposite extreme that the representative is entrusted with absolute power and right and complete freedom of judgment. But the impossibility of either one of these solutions of representative government is seen in the actual governmental processes of today.

An analysis of the situation will indicate that the delegate theory is little more than a vague political theory for a representative cannot reflect the views of all his constituents. The persistent demand for popular control is sufficient proof of such a statement. In the other instance of the representative who acts entirely upon his own will, it is to be pointed out that here is a contradiction. How can a free representative possibly represent another equally free person or how could such a person represent a plurality of free wills. Does it not appear then that representative government is a contradiction in terminology as well as practice.

There has been evident for sometime, a concept of the elementary reality of fact that government must be related to the original source of political life and to the fundamental principle--that government must reflect the essence of the public life processes, habits and thoughts. William E. Borah commented on this situation: "It is almost an established fact, well supported by historians, that the World War was caused by manipulation and scheming of twenty-five men. It seems to me some way must be devised to bring the people into fuller knowledge, a ~~no~~ closer contact with the conditions and facts which lead up to war."

This suggests that our government may at present be employing obsolete conceptions and methods of representation which are founded upon the two above noted suppositions, one of which has resulted in indifference toward the people and the other

which waits upon the mandate of an election to attempt to express public sentiment. Likewise this fact would imply that governmental institutions are seriously lagging behind the evolution of political thought. The logical conclusion from such an interpretation is to adopt the view that we must seek a new approach to some of the vital problems of government or at least, modify the existing system so as to bring it into conformity with the feelings of the source of sovereignty-- the people.

This thought embodies two convictions. First, that the principles of representative government upon which the government now stands is, when observed historically, merely a hypothesis employed as an experimentation toward democracy, and is in many instances no longer useful in meeting many issues and conditions which have arisen. And second, new principles and practices of government must be developed to meet the realities of political experience and this method of determination of new political principle is experiment and not interpretation of fixed political creeds and dogmas.

Therefore representative government as it is spoken of in America is an abstraction of theory and a fiction, although it must be conceded that any experimentation done in the name of seeking new, workable principles of government is subject to similar rationalized speculation. Nevertheless it is a valid experimentation in reaching the objective of government of the people, by the people, and for the people, although the

solution lies not so much in innovating new institutional instruments, but rather requires that a new direction of purpose should revitalize our legislative institutions.

In fact, we have come to the point where a large body of political thought which influences and permeates our every institution, regards the Constitution and the legislative process as an incorporate body of law which may be translated into an abstract system of doctrine beyond and apart from the corporate vitalizing will of the people. We are likewise stagnated in a period which has been marked by an unseeing adherence and respect for law which overlooks the reality that the motivating force and principle embodied in the law must be understood. The state is thus being interpreted as the composite of abstract and detached reason. As a consequence, the state is losing its vital and connecting relation to the more profound thought and underlying functions of the people. Nor can this unstable and thin veneering of reasoned abstraction replace and falsify the real purposes of the life system. Neither can such a thought process project the state as a perfected mechanism to be revered as an end in itself.

Notwithstanding this, the conclusion that our state theory rests upon a mistaken hypothesis of the theory of will organized into the machinery of government, does not condemn the representative system in all or part. Quite to the contrary, this analysis indicates that a false emphasis is being

applied to the state as an institution, and mention must be made that the representative theory wisely recognizes the state in its actual capacity as a device which requires the most expedient formulation of wills. And, too, of recent times there is evidence that our state system is searching for something more than abstract reasoning and is attempting to reflect the organic, dynamic nature of the substratum of politics which shows itself in the processes and functions of the life of the people. In reality, no state can long remain unaware of the essence of its composition which is the fundamental will of the people.

Earlier in this paper it was stated that America is in a phase of an evolutionary process; that the war referendum was regarded as one of the expressions of this particular contemporary phase of transition. Further, the discussion of representative government illustrated that there is too little recognition and reaction toward this dynamic state process and implied in the subject, was the possibility that if the assumption were not acted upon by the state, our American state, would, failing to meet the needs of the people, inevitably decay and disappear with the states of the past. The adoption of a war referendum is a move in this proper direction toward the reformulation of the purposes and objectives of the state to bring the operation of the state into harmony with the opinions of the people.

Thus, it is assumed that the war referendum embodies a principle of government which could well be incorporated into the evolutionary progress of the American state as a method of realizing the dynamics and profundity of American life and could be useful in avoiding the possibilities of our government becoming a decadent one. It then remains to see whether this device is a practical and appropriate expression which could well be applied in meeting and recognizing the problem.

Under our principle of democratic rule, which is effected through the will of the majority, it cannot be questioned that all the acts of our representative democracy must, or at least should be, in accordance with public opinion if the working of the representative system is to be consistent with the theory which underlies it. ⁹⁹ Quite logically therefore, it can be assumed that the declaration or conduct of war should reflect the will of the majority. Whether the history of the United States will vindicate the declarations of war which have made by this country upon others is open to serious debate. Supporters of the representative system, which have made use of the war power, say that such wars could not have been successfully concluded unless the people were generally sympathetic toward the conduct of any such war. But, it has been repeatedly shown that once a nation has been committed to a policy, it has no choice but to unify its actions in support ¹⁰⁰ of that policy.

99. Barnett, "Referendum on War", Open Court Magazine, Feb. 1925, V. 39, no. 2.

100. Quoted in thought from the papers of W. J. Bryan, Sec. of State under Wilson.

No definitive answer, as to the popularity of the wars we have waged, is or ever will be possible because there has never been any method provided whereby the general will could be ascertained. Pressure groups, lobbies, and minority interests have, of course, been successful in representing their views to Congress upon the subject of a declaration of war, but the mind of the great masses continues to remain unknown.

The principle of the referendum, regarded objectively, possesses undeniable merits in making this sentiment of the people known to Congress. The criticism has been frequently made, however, that the referendum has a tendency to undermine representative government not so much because the referendum is any less democratic but rather because the national referendum is based upon a different philosophy of government which is as yet untried. Apparently these critics do not realize that the foundations of any state are uniform. That is, the state regardless of its form, is ultimately dependent upon the popular will as has already been shown. As to the ~~fact~~^{truth}, the national referendum is an experiment, it can be shown that the neutrality legislation passed by Congress prior to the present European war marked a radical departure from our traditional policy of freedom of the seas and the forceful observance of the tenets of international law. No one would seriously doubt the propriety of such neutrality legislation as an effort to make the United States secure from futile participation in another foreign war.

But those who are traditionalists, whose beliefs are founded upon no worthwhile principle, and those who have a vested and contingent interest in seeing that the Congress retain its war making powers are anxious to defeat the war referendum before it becomes a threat to their Machiavellian motives. What is really needed is some effective means whereby the government can comprehend the voice of all the people and not act spuriously upon the wishes of a minority of the people.

Although the intentions of many of the critics of the war referendum are undoubtedly sincere, the logical consistency of our philosophy of the state implies that opposition to the principle of the war referendum is in essence an effort to defeat the principles of democratic government to which we adhere in factional disputes and theory if not in reality. If the latter be true, why not drop all this talk and subterfuge of representative democracy and institute in its place some centralized form of government which need not pay lip service to a principle which some believe interferes with expediency and the attainment of the ends of the state. The answer is that the American people are convinced of the worth of democratic principles and will not be put off by the sham and hypocrisy of political opportunists.

In any case it cannot be shown with any accuracy that constituted representatives of the people voice the opinion of the people in regard to war.

Reasoning upon the fundamentals of democratic government, the fact is obvious that the voice of the people should be substituted for Congress as the final authority in so far as possible. The principle of the referendum is universally accepted to the extent that an election majority is taken as evidence of public opinion; and the efforts of public officials to ascertain public opinion, however occasionally, further adds to the reality of the acceptance of the referendum principle without using it to the best possible advantage.^{1*}

It is imperative to recognize the anomaly whereby the Executive has usurped much of the authority of Congress to declare war. This fact constitutes a serious breakdown in the machinery of representative government. The action of Congress in declaring wars has come to mean little more than formal ratification of an accomplished fact that a state of hostilities exists between this and some other country. The war making power vested in Congress by the Constitution has been usurped to such an extent by the Executive that even if Congress did decide as the people wished, its free will would be rendered ineffective by the illegal acts of an aggressive President. By the maneuvering of the army and navy, by using the prestige of his office, by epithetical denunciation of those who oppose him, the President can create a situation where there is nothing left for Congress to do but vote approval.

2* Simonds and Emeny, Great Powers in World Politics, 1935, p.54.

1* Barnett, op.cit.

Since the Constitution has not effectuated the war making power as set forth within the document, does it not seem that the supporters of the representative government would combine with the proponents of the war referendum measure and undertake to check Executive diplomacy, acts, and commitments which compel us to go to war regardless of the opinion of Congress and the people. The war referendum would place an additional check on the Executive and make that department more responsive to the popular will, thus precluding involvement in war by the Executive branch.

Surely this, our doctrine of inalienable rights, cannot be reconciled to a definition of sovereignty which assumes that the final authority is lodged in a small and select circle such as Congress and the Executive. To ignore a realistic situation which allows the President to sacrifice the people before his personal views is nothing but a tacit admission that our representative method of declaring war is a fallacy and must be reinforced by something at least similar to the war referendum.

The contention that the passage of the war referendum would weaken our national defense and make the nation vulnerable to the attack of enemies is based on the mistaken belief that the influence of the United States in world affairs depends upon the ability of an administration to threaten and put us into war regardless of the opinion of the people.

Our geographic and strategic position is such as to preclude the necessity for our taking a role in the game of power politics.^{2*} In addition, the knowledge that the United States must submit such a declaration to the people would tend to strengthen the popular opposition to war throughout the world. Nor would the enactment of such a peace amendment increase the danger of resort in crisis to a totalitarian dictatorship if the foundational principles of our government are sound and bulwarked by something firmer than the mere forms of state institutions. Too, if it be thought that there is a phraseological weakness in the war referendum in that Congress retains the discretion of determining the question of the definition of invasion and would abuse its power in this respect, the conclusion must follow that there is no clearer indication that peace is not safe in the hands of the President and Congress.

Likewise, it is pertinent to inquire if the war referendum is a sufficient way of attaining the security from war which is desired. The belief is popularly held that Congress is much less subject to the unbridled passion and emotion of war propaganda, but Congress was pitifully delinquent in analyzing the situation presented to them in 1917, when there was widespread disapproval of our entrance into the war. In the minds of the American people there is a well crystallized conviction that our participation in the last war was a foolish mistake and failed to produce the promised results. The intricacies, conspiracies and issues of foreign affairs

^{2*} Simonds and Emeny, Great Powers in World Politics, 1935, p.54.

are no longer beyond the ken of the common man who shows a remarkable astuteness in discerning the motives of international politics. Norman Thomas, a liberal and advanced thinker, who is the subject of much invalid criticism because of his affiliation with the Socialist party, said in commenting on the possibility of United States involvement in the European war; "If we keep out, it will be because we have increased the democratic control of politics and foreign affairs by the great mass of our people." The referendum on a war would be such a dominant issue that the electorate would be well informed and intelligently qualified to pass on such a broad question of policy and no scurrilous and contemptible condemnation of the nature of the mind of the common man will suffice to deny the real principle of the amendment. However, it must be realized that the war referendum is not concrete proof against pressure, propaganda, deception and press and radio influences. But democracy is established on the premise that in the long run collective wisdom and common sense excels the arbitrary rule of oligarchy-- especially a financial oligarchy which occupies such a prominent position in our high circles of national government. When the people are faced with a decision of going to war, there will be no political indifference on the part of the public whose popular judgments will be not any more paralyzed than that of Congress. The Congress is equally subject to concentrated pressure influences based on high sounding,

altruistic persuasives of patriotism. Those who bear the burden of war from loss of life and property will be less likely to stampede into an inadvisable and unjustifiable declaration of war than those in the background of the fighting.

The record of the working of the referendum, while by no means perfect, is a good one, because this democratic procedure enlists the cooperation of every citizen and is motivated by the principle of improving government and is not intended for the purpose of destroying representative government as is so often publicized by phrase-democrats.^{3*} This latter group opposes the overwhelming demand for the realistic projection of the war referendum because it will infringe upon their prerogatives as they now stand and will expose these arm chair patriots.

To fool the public, these war-mongers speak of the incompatibility of direct and representative government which has been exposed as nothing more than a fallacy. The experience of Switzerland with the referendum has been so conspicuous that its success is a widely recognized fact and their representative system has not been jeopardized or even damaged.

The referendum goes far in remedying the basic defects of the present system because it derives its inspiration and

^{3*} Included in this category, to my notion, are Landon, Roosevelt, Browder, Lippmann, Doroty Thompson and Frieda Kirchwey, all of whom profess to crusade for the extension of the democratic principle, especially for the "exportation of democracy" abroad.

stimulus from the roots of the life of the people. Actual experience with the referendum has proved its practicability. In Switzerland a comprehensive national referendum has established its value and practability. In Australia a very similar proposal was acted upon with good judgment by the whole electorate and did not full the prophecies of disaster made by its opponents. These laboratory results are concrete demonstration of the very real possibilities of the popular plebiscite on war. Here in America the states have, on the whole, used the referendum to excellent advantage. Besides, many of the shortcomings and defects of the state referendum would not be exemplified in a national referendum. Being nation-wide in scope and paramount in interest, the national referendum of this character would not suffer from public indifference or ignorance. This has been true of the referendum in several of the states where the measure involves problems of detail and investigation which are clearly beyond the perception of the average voter. Questioning the national referendum because of isolated state failures is not justifiable in this case.

The state as an institution should undeniably possess the highest possible power consistent with the greatest possible freedom of the individual who should decide that sphere of authority held by the government of the state.^{4*}

4* Burgess, Foundations of Political Science. 1933, Chap. III

The conception of the general will has been spoken of as the ultimate determinant of the principle of our government. This observation connotes that an index to this popular sentiment should logically be translated into terms of procedure and fact. That key to the feelings, desires, and ideas of the people is furnished by polls of public opinion. If such polls are a legitimate, representative cross section of the public thought and are properly conducted, they stand as valid interpretations which should accordingly be acted upon and adopted. The Fortune Survey^{5*} and the Gallup Polls^{6*} of the American Institute of Public Opinion have repeatedly proved their accuracy. Both polls reveal that the American people favor a national referendum. Is it not an unusual paradox for a supposedly democratic government to resist the wishes of its constituencies?

The belief that the function of declaring war is so vital that it cannot be safely entrusted to popular sovereignty fails to note that the national war referendum incorporates a two fold check upon those steps leading toward war. Most of the peace amendment resolutions offered, the Ludlow Resolution in particular, contain this proviso. Congress, according to this, must first sanction such a declaration of war which means in fact that Congress would itself vote for a declaration of war.

5* Fortune Survey, Fortune Magazine, Dec. 1939, v. 20, p. 120.

6- Gallup Polls, Public Opinion Quarterly, July, 1938, v. 2, pp. 373-390, v. 3, pp. 581-607.

The deliberation and protection afforded by Congressional consideration would thus be preserved and obviate the supposed possibility of hasty war judgments by the people. Whenever that declaration by Congress is contrary to public opinion, the vote of the people on the matter should be observed. Through this method a double purpose is accomplished. First, the sentiments of the people are upheld, and in addition, the democratic principle is extended and vitalized.

No interference with administrative conduct will result from the referendum unless the President intends to use war as an "instrument of national policy" which was expressly renounced when we signed the Kellogg-Briand Pact. The action of past Presidents in keeping us out of war is not a commendable one. General U. S. Grant denounced our participation in the Mexican War in which he served as an officer "as one of the most unjust ever waged by a stronger against a weaker nation"; called it "unholy"^{7*}. President McKinley went to Congress to ask for a declaration of war against Spain although it has now been established that Spain had already completely surrendered.^{8*} Thus the President deceived Congress. It may happen again if we do not legislate against it by passing a war referendum.

The President of the United States is responsible for the maintenance of peace.

7* Barnett, op. cit.

8* James Ford Rhodes asserts that this was done purely to strengthen the Republican Party.-Rhodes, History of U. S.

This does not necessarily mean that he will be less influenced by passion and propaganda. President Roosevelt ^{has} given a true picture of a President subject, when war is near, to tremendous pressures by interested groups for the sake of profits just as Wilson succumbed to these influences from 1914 to 1917. A war referendum would considerably reduce this presidential vulnerability.

No part of the war referendum can be construed as an impairment of our national defense. In fact, most of the sponsors of war amendment resolutions have advocated national defenses that are authoritatively said to be excessively adequate. Passage of the war referendum does not mean that foreign countries can take advantage of internal weakness and dissension on whether we shall go to war. In a country of free speech and press, there will always be differences of opinion in Congress and among the public. To ask for undivided unity would be the equivalent of demanding the withdrawal of any right to freedom of thought. Nothing could be more antagonistic to the principles of democracy. Once the country has decided upon a judgment, it can be safely relied upon to unite in support of that policy.

The war referendum will not apply to circumstances of invasion which means that defense will not be stopped where it is necessary and proper, and operations by the Army and Navy need not cease. This completely discounts the argument of former Secretary of State Stimson, who in a letter to the

New York Times, declared; "The necessity of waiting for a decision will destroy the initiative and spirit of our military and naval personnel." If Stimson's assumption~~s~~ is correct, it would appear that personnel should be investigated, if not replaced.

The war plebiscite has been defined as an untried panacea which should not be mentioned at such a critical hour of the world's history. Our program outlined by our various recent neutrality acts is without precedent, but was passed three times in reply to the sentiment of the American people. Any improvement in our political technique comes only through employing new methods and measures which hold promise of progress. New ventures in diplomacy and foreign affairs are especially justified since those currently in use have failed. It is also argued that passage of such an amendment would irreparably damage the Monroe Doctrine. If this be ~~the~~^{the}, its significance is that the America people wish to refrain from the dubious obligation of protecting this area from European aggression. The people are the agency who should decide that issue. Senator La Follette's alternative proposal (referred to in Chapter II) specifically exempts cases in which there is an invasion of any North American or Caribbean territory or waters.

The popularly held belief that the war plebiscite would take far too much time and thus endanger the country is fallacious.

The short period necessary to determine Presidential elections stands as an accurate refutation of this misconception. Interestingly enough, the Presidential election of 1936, indicated that the public used its own judgment as against that of powerful propoganda agencies (who backed the Republican Landon) and defeated a candidate pushed by these pressures which are commonly thought to crystallize public opinion in any direction they may decide upon.

The contention that such a war amendment could not be phrased to meet every situation is undoubtedly true, but it is not controlling or final in any case. This criticism is applicable to all legislation and this argument carried to its conclusion (*reductio ad absurdum*) would infer that no legislation of any kind should be adopted. Above all, this is no reason why we should not attempt to formulate the best possible laws as protection against the insidious encroachments of war.

The matter of going to war is the most vital that ever faces any individual. Why not give that citizen his inherent right to determine what his fate is to be? The adoption of the war referendum represents the continuation of our natural political evolution, and this power to declare and decide war is ultimately the real test of our democracy. Here is a challenge-- an opportunity to make democracy work where it was formerly thought to be unworkable. America has an obligation to consummate in this way, the promising achievements of democracy.

CHAPTER SIX

The War Referendum and Realpolitik

Both positive and negative arguments have been examined and analyzed as related to a national war referendum. To avoid any premature conclusion, it is advisable to weigh other evidence, which upon application to the subject appears to impose certain modifications upon both positions. Perhaps the most accurate method of ascertaining real situations and political constructions that do, and must exist, is an inquiry into the mind of the public. For this purpose, the American Institute of Public Opinion and the Fortune magazine have conducted polls of public opinion. But before turning to an interpretation of these tabulations it is necessary to consider certain phases of public and individual reaction to war situations. Entrusting anything as consequential as the war power to the electorate without first investigating what could be expected from the people, might be a disastrous if not fatal blunder. Unfortunately, no broadly representative polls were made during the period of the last World War. To chart opinion in time of peace is a process vastly different from recording a war time reaction of the public. With the existing instrumentalities, it will be possible to take such a poll under present conditions and draw certain conclusions from the comparison. Lacking these statistics at present, the problem is to attempt to anticipate, or at least discern, what will control the public mind in the time of crisis and when a situation arises which threatens war.

At the outset public opinion should be differentiated from popular opinion or impression. In the former case there is consciousness of the facts of the situation and what is being done, and this point is reached by rational study and consideration of pertinent information. The term implies studied departure from custom and tradition and readaptation of old principles and acceptance of new methods of thought and action. Public opinion is born from custom, traditions and mores, yet it is the instrument which changes them. Popular impression consists of little more than the unthinking reaction of individuals who are motivated by suggestion and imitation. Public sentiment, as distinguished from public opinion, is merely unanimity of feeling on a given subject while a preponderant opinion is merely the conclusion reached by practically all of the people of a group--it denotes acquiescence. The public's choice of alternative measures is to be regarded as a public judgment and not necessarily a true public opinion.^{9*}

In this realm, democracy is to be regarded as a form of government, based on the influences and workings of public opinion. "Public" is used to signify every strata of society which is called upon to decide an issue. In the instance of the war referendum, the American people represent the public. To reach a public opinion there must be a meeting of minds, the prerequisite of which, is a common denomination or harmony of interest for such a public opinion, and freedom of discussion and dissent.

9* Lecture notes compiled in Political Science 421.

Likewise a public opinion is partially nullified unless the minority accepts that public opinion. Race feeling, irreconcilables, differences of interests and selfish motives, and religious doctrines are factors which preclude the formation of a public opinion. In democracies the effect of public opinion is to curb and place limitations upon executive action.

10*

Lowell says a belligerent and aggressive minority can hold sway over a lukewarm majority. This regulation of public opinion involves the dangers of minority action in the channeling of that opinion. Likewise unregulated public opinion may result in indecision and a divided front on paramount issues. As a general rule, pressure groups are not completely successful in regulating public opinion because of opposition from other pressure groups but the resulting confusion may be unfortunate for the public itself. Or again, the conflict between pressure groups may determine the issue depending on the ability of one or the other to dominate the public mind. This is closely applicable to the war referendum since armament and allied interests, with the resources ~~at~~^{at} their disposal, would be aligned against peace societies, the churches, and certain publications. The position of the government might be the determining factor in this situation. Naturally, unsound public opinions may arise, but freedom of speech is looked upon as a sufficient safeguard because the public will soon see its error.

10* Lowell, Public Opinion and Popular Government, 1919, p. 152, and 169.

But with the war referendum, any unsound judgment would apparently be final and fatal. Moreover, the science of public opinion demands that all essential factors be taken into consideration. Failure to do so results in prejudice. How possibly could all relevant facts of a threatening war situation be made known to the public, which for the sake of good government should exercise its will only when it has arrived at a valid public opinion. Conversely, how can the public educate itself to the task if it be denied the task of learning to use its will. The only answer is that there must be a compromise between the extremes. A conclusive discussion of a question, such as this one, before the public is ready for a decision often results in a premature, emotional, prejudicial decision. A vote on going to war, because of the haste involved, would probably reflect this attitude which is not a satisfactory or healthy one for a democratic state. No question, however, should be beyond public discussion although a decision quite possibly should be. The Roosevelt Administration in its anxiety to suppress the Ludlow Resolution distinctly boycotted an ancient obligation to allow full and free discussion of the measure. The dictum should be that nothing is beyond public discussion.

A war referendum is not as much of a technical question as one might think. It is an issue for public discussion and decision on the basis of true public opinion provided it is not decided on the strength of propaganda and pressure groups.

Difference of opinion will of course manifest itself in this instance, just as in any other opinion, due to ascribing varying weights to different factors. ^{11*} Difference in weight attachment is primarily due to environmental factors which would infer that since education and study provide the most intelligent opinion, the decision of the best informed group would be the most ~~invalid~~ interpretation and should be followed accordingly. This implies Congress as the agency that should make war judgments.

Group action is generally less intelligent than that of individuals composing it because of the absence of opportunity to use critical faculties and group intimidation. These effects could possibly be overcome in the secret ballot booth when the individual casts his preference. The group because of its degenerating influences is an obstacle to the formation of a real public opinion and proper regulation of public thought and action. It is hostile in this respect to a war plebiscite.

Walter Lippmann's conception of the stereotype is another criterion of public opinion which is difficult to gauge in relation to the war referendum. ^{12*} The stereotype is linked to prejudice and preconceived notions and all appear to interact to produce fixed thought patterns which preclude notable social progress. Stereotypes arise from limited observation which creates an impression that colors opinion.

11* Class Notes, op.cit.

12* Lippmann, Public Opinion, 1922.

The consequence is the formation of imaginative mental pictures and form opinions and policies on the basis of the stereotype. The stereotyped individual, may and very often apparently does, considerable thinking, using the stereotype as the premise, but too often the conclusions derived therefrom are not valid ones. The American mind, according to Lippmann, is notorious in the respect of being motivated by the stereotyped opinion. This theory is in opposition to that held by Lowell, except that the latter adheres to the view that the stereotype may be used as facts in arriving at a personal opinion. In the eyes of Lowell, a stereotyped opinion is not a rational one and would be of small effect if manifest because of its obvious irrationality. Lippmann concedes that the stereotype may have part of its source in fact. Stereotypes may be individual as well as cultural or group which complicates the possibility of attaining a large, true public opinion. These divergent views of two authorities in the field furnish no very exact clues as to what extent the stereotype permeates the American mind. Very likely, it is at some point between the suppositions of both Lowell and Lippmann. The dominant presence of the stereotype among the national electorate would indicate that if those stereotyped opinions were contrary to the objectives of the war referendum (abstinence from any except a defensive war) it would be dangerous to poll the people for a war decision regardless of the theoretical tenets of democracy.

Still the voice of the people cannot be ignored lest they erect a government in harmony with their mistaken ideas, however conceived. One thing is certain. Despite the fact that the stereotype does prevail in the United States (the moving picture has had a large part in creating the stereotype) not all of these fixed thought patterns are bad, but some unusually undesirable stereotypes are prevalent on the subject of war. Among them are the notions that the United States will always inevitably be drawn into world or regional conflict, that we have a solemn duty "to make the world safe for democracy and enter "wars to end war," that democracy cannot prosper unless it exists throughout the world, and that the United States is forced to go abroad to protect our state form at home. To submit war declarations to the people under these circumstances appears as a dubious move. Quite possibly, however, these ideas are held by a minority of the voters. Furthermore, Congress is pervaded in part by the same influences and has not shown any remarkable immunity from the effects of the stereotype.

Manufactured needs (such as excessive estimates of adequate national defense) launched from political strategies are another disruptive factor in arriving at a real public opinion. These hypothetical necessities are unknown to the public which is unconscious of their real nature and purpose. Patriotic motives can be used by demagogues to effectuate a program before

the public realizes what has happened; defense of the United States, construed to mean intervention abroad for continental protection, is typical. The popularity of such proposals makes them noxious to the war referendum.

The gregariousness of the people of the United States with their tendency to form innumerable organizations makes each citizen a constituent of many different publics. This fact increases the alternatives available and makes the outcome of a war referendum even more unpredictable.

Prejudices are unquestionably predominant in connection with the race issue, and action in this sphere is superimposed on the basis of these prejudices. To refer a declaration of war involving, say Japan, to the people is not pleasant to contemplate. Racial prejudices are not founded upon instinctive beliefs but upon social conditions; environmental factors are not easily modified.

If the personnel of the government were determined to precipitate war in spite of a war referendum, freedom of speech might be seriously infringed to prevent the estoppel of the government's objective. Only government propaganda would be allowed publication and expression. The Supreme Court has declared that radio control is a federal jurisdiction. Thus radio censorship, together with the phrasing of the war declaration, could be so employed as to possibly decide the election.

13* Whitehurst vs. Grimes, 21 F (2nd) 787.

The text of the Australian conscription plebiscite was so stated that it is all the more remarkable that the measure was defeated.

The increased tendency to enhance the cult of nationalism in the United States has caused some situations which are not conducive to intelligent public action and therefore, the war referendum. The purposeful corruption and distortion of American historical and contemporary facts has resulted in a glorified, inaccurate interpretation of facts which colors public opinion in the wrong direction. The whole idea is designed to inculcate patriotism (false patriotism in reality) which either wilfully or unintentionally has generated some consequences which are antagonistic to the success of the war plebiscite. The attitude of the American Legion and the Dies Committee on Un-American activities illustrates this trend. These instilled prejudices, influences and even control later conduct and opinion which would probably be dangerous when applied to the national vote on a declaration of war. The position of the press, while not definite, probably would be as of 1917, when it was the front line propaganda device. Financial interests dominate the press to an alarming degree, and no doubt would campaign for war if it promised immediate financial return. The counter facilities of propaganda would be limited and probably draw denunciation as being unpatriotic.

Any reasonable editorial comment that had escaped the control of a militant government and acquisitive industry seeking to profit from war, would be of even less importance than formerly. This can be attributed to change in the character of editors from independent thinkers to syndicate bosses who act upon the dictates of their financial superiors and to habits of headline reading. The war press could, in a crisis, capitalize upon the impression of a continued free press. The significance of this is so compelling as to doubt the propriety of allowing ^{the} people to decide war or peace and imposes a forced confidence in Congress to curb Executive usurpation and protect the welfare of the country.

The Fortune Survey, published in December, 1939, and compiled under conditions of early war time reaction proves there is a strong peace sentiment in the United States. The Compilation on the question of ^awar referendum follows:

"Where should the war power rest?"

	Men	Women	Under Forty	Over Forty
Congress	55.4%	44.2%	47.4%	52.2%
Referendum	40.0%	45.3%	46.0%	39.4%
Don't know	4.6%	10.5%	6.6%	8.4%

This was the reaction to what was proposed and defeated in the last two years in the form of the Ludlow Resolution and it is readily seen that the nation is almost equally divided on what method should be followed in declaring war.

In December of last year, the nation was eager and determined to stay out of war which probably accounts for the large vote to avoid any delay incident to a referendum. The vote to leave the war power as presently constituted can also be attributed to the public realization of the necessity to make a quick decision, faith in Congress to keep us at peace, or perhaps the tendency to resist change because of traditional practice.

Plainly a war referendum amendment could not now be passed despite the pressure activities of peace societies and the lobby of the peace organizations. According^{to} this poll,^{14*} the men are inclined to leave the war decision to Congress although the young men are slightly less so inclined since they will be the first to go. By a small margin the women indicate that they wish to be consulted in the judgment. Sectionally, the Middle West and the Northwest Plains, who are influenced by isolationist Congressional representation, wish to have a vote. From an economic index, only the lowest income stratas ask for a popular plebiscite before entering war; this does not include the poor Negroes however. Occupationally, only two groups represent a view contrary to the national vote--factory labor and the unemployed--which is not in the least unexpected. On the strength of these statistics which show a wide disparity with the peace time opinions recorded by the Gallup Polls, there can be no legitimate

14* Fortune Magazine, op,cit.

demand for the referendum because of the doctrine of legislative response to a majority opinion.

15*

The more inclusive Gallup Poll asked a number of important related questions:

If Germany and Italy go to war against France and England, do you think we should do everything possible to help England and France win, except go to war ourselves? Yes 69% Feb.1939.
In case Germany and Italy go to war against England and France, how far should we go in helping England and France?

Sell England and France food and supplies	March, 1939. Yes 76%	April, 1939 Yes 82%
Sell airplanes and other war materials	Yes 32%	Yes 66%
Send army and navy abroad to fight Germany and Italy	No 83%	No 84%

These figures can be interpreted to justify the action of the special session of Congress (1939) in allowing England and France to buy American supplies. They also show a very strong predisposition in favor of the Allies who are at present in a critical position. Thus to assist the Allies and express their opinions, the electorate might easily plunge into war by the referendum route when it was demanded of Congress to order such a vote. The percentages against actual participation of the United States in foreign war have probably been decreased

15* Public Opinion Quarterly, op.cit. The Gallup polls are recognized as being unusual/accurate in their tabulations, seldom varying more than 4% from actual results. This authenticity is due to scientific inquiry and organization of the survey to canvass a representative cross-section of the public of varying color, sex, church, etc.

tremendously which would mean that the war referendum is hardly suitable under conditions of war hysteria and verifies the fact that peace opinions are unstable in war reactions and cannot be relied upon to keep us out of war.

Questions as to whether we should lend money to the Allies to fight the totalitarian powers and whether we would join in a move to boycott German made goods were respectively answered No 69% (March, 1939) and Yes 56% (October, 1938) Yes 61% (December, 1938) Yes 65% (April, 1939). The first answer can be implied as desire for strict neutrality but is an opinion that is relaxing. The second establishes beyond doubt that there is prejudice against Germany to our detriment.

These questions on the far of war are pertinent:

If England and France go to war against German and Italy which side do you think will win? (September, 1938) England and France, 86%.

Do you think that the United States will have to fight Germany again in your lifetime? Yes 46% (April, 1938), Yes 48% (October, 1938).

If Germany and Italy defeated England and France in a war, do you think Germany and Italy would then start a war against the United States? Yes 62% (February, 1939).

The reality is that the Allies are at least momentarily losing, contrary to expectations. There is a large percentage, increasing rapidly, which regards military action against Germany as inescapable, and considerably over half of those

interviewed would probably decide that our best national defense against Fascist aggression is an European offensive.

However, compulsory military training is not yet acceptable to the people:--

Do you think every able bodied American twenty years old should be required to go into the Army or Navy for one Year?

No 63% (December, 1938)

The public thought, according to this tabulation, that the Allies had treated Germany fairly at Versailles and the post war years which is no particular credit to public insight. The statistics below are likewise applicable:--

December, 1936

January, 1937

May, 1939

Unemployment
Economy
Neutrality

Unemployment
Neutrality
Social Security

Keeping out of war
Solving unemployment
Business recovery

What do you regard as the most important problem before the American people today?

There can be no doubt as to the magnitude of the interest which would accompany the plebiscite but probably a very badly colored interest. The stereotype of inevitable participation is reflected in this analysis:--

If there is an European war do you think the U. S. will be drawn into it?

Jan. 1937 July, 1938 Jan. 1939 April, 1939 August, 1939

Yes, 38% Yes, 54% Yes, 57% Yes, 58% Yes, 76%

It appears that the people have already cast their vote by way of commitment. No sane person would be willing to give the people the war power if it were to be subjected to such abuse as these figures indicate. These figures, contrasted with the result of the question: "If another war like the World War develops in Europe, should America take part again?" (No, 95%, November, 1936) leads to the conclusion that the confidence to be placed in the public should be highly discriminatory. According to the issue involved, the latter question is not identical in phraseology, but an alert public would note the similarity and consistently adhere to their convictions. At the time this second question was asked (Nov. 1936), the public by a 56% vote declared it thought America would stay out of any European conflict. However, this discrepancy in opinion can possibly be traced to a feeling that America should remain neutral. But because their decision will not be binding, whereas the opinion of Congress and the Executive (which the people do not completely trust) will be the deciding judgment, The people believe factual evidence can lead to no other conclusion than that Congress and the Executive will lead us into war regardless of public opinion.

The war referendum statistics show a very flexible and unstable public opinion:--

In order to declare war, should Congress be required to obtain the approval of the people by means of a national vote?

October, 1937

Yes- 73%

October, 1938

Yes- 68%

October, 1939

Yes- 58%

These tabulations would now have to be adjusted at a point even beyond that established by the Fortune Survey which disclosed a reduction of those in favor of the referendum to 50% of the representative public polled.

A national vote on conscription would probably have a better chance of attaining the security sought in the war referendum:--

"Should the Constitution be amended to require a national vote on conscription before the country could draft men to fight overseas?" (March, 1939) Yes, 61%. This percentage is only 3% more than that vote favoring a war referendum on the same date, but the voter's consciousness that he himself or his family would be the victim of a bullet or a bayonet would cause a higher caliber of thought and a reluctance to personally sacrifice all to the tragedy of war. Australia, under a war referendum, unquestionably would have declared war, but on the personal issue of conscription took an opposite attitude. Consequently, the immediate possibility of a national vote on conscription is worthy of consideration. From these facts and concrete assumptions concerning public opinion, we can logically turn to an estimate of the value of the war referendum, notwithstanding that, either the adoption of a war amendment or the continuation of the present method, probably would make no great difference in the course of events relative to war because of realpolitik and its methods.

Conclusion

Two facts are undeniable. The first conviction is that the national war referendum does not fulfill its objectives in the light of the probable reactions of the electorate; that the present war referendum movement is poorly timed beyond serious consideration; and that the war plebiscite is premature in the sense that the public has far to go in self education before employing it intelligently. The second factual conclusion is that the present investment of the war power is an inadequate safeguard against the danger of arbitrary war declarations.

Equally outstanding is the fact that the action of Congress and the Executive on the Ludlow Resolution which represents the war referendum principle, is an indictment of our democratic process which we profess to sacredly revere. The worst practices extant in modern politics have been inflicted upon the war referendum which has called attention to an alarming deficiency in our state procedure, viz., that of Executive usurpation of the Congressional war power.

The fundamental, comprehensive criticism of the national war referendum is that it is sumptuary legislation which is not implemented or bulwarked with workable features or supporting facts of real validity; nevertheless, the war referendum does reflect a pressing need of our government. That need is to more closely coordinate the feelings of the common man with our foreign policy, and simultaneously check Executive acts, which independently commit us to the disasters of war.

To achieve the former, public opinion must be educated and projected which means a corresponding revitalization of representative government to reply to the voice of the people. The latter involves the passage of legislation and the energetic attention of Congress to restore the war power to Congress, in fact it means vigilant supervision to see that the war power remains within the discretion of Congress. This danger, in incomplete control of the legislature over the steps in the road to war, is evidenced by the failure of the administration to invoke the Neutrality Act, passed contrary to administrative wishes, and speeches which would "quarantine aggressors". Regardless of individual approval or affirmation of these executive acts, they reflect a constitutional encroachment that ought to be restituted at the earliest possible moment.

One suggestion is to place a Congressional check upon the pursuit of policies and acts which lead to war without the assent of the representatives of the people. This would necessitate the creation of a joint Congressional Committee on Foreign Affairs which would be composed of members from majority and minority parties. The duty of the Committee would be to veto Executive acts and policies which are not consistent with the foreign policy of the Congress. In fact, the Committee would be impelled to sanction every diplomatic note, to direct

maneuvering of the Army and Navy, and to approve the dismissal of foreign diplomatic representatives. This created, Congressional jurisdiction over powers now constitutionally delegated to the President, would probably necessitate a Constitutional amendment which is an imperative prerequisite if America is to follow the "path of peace."

The war record of Congress is not an admirable or even creditable phase of our institution of government, but to place complete, or even partial responsibility, upon Congress for its past blunders and shortcomings is hardly justified, since this body has never been strategically situated to assert its delegated war power.

For many years, there has been the recognition of the absence of a "moral equivalent" to displace the ravages of war. The truth of the statement is unexcelled, but remains unfulfilled. That juncture must be reached before mere legislation will solve the problems of war. When we will even approach that desired end, appears as a day beyond reasonable conjecture. Yet, resignation to the havoc, wreckage, and tragedy of war will accelerate its destructive characteristics. America must face that future with courage and a determination to meet its obligation to arrive at the sincerely desired objective of peace.

Day by day, the destiny of America in the orbit of world affairs becomes less secure and more precarious. For the moment,

the war referendum must be reserved from popular dictates until it can be rightfully inherited by the people who must assume the task of preparing themselves to receive the war power. The war referendum as the delineation of a fundamental principle of government, which is to be sought as soon as practicable in synchronizing our political realities and our goal of real democracy, has made a notable contribution to the political thought of the twentieth century.

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